

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

77-1080

In The
United States Court of Appeals
For the Second Circuit

UNITED STATES OF AMERICA,

Appellee.

v.

SAMUEL MOSCHIANO,

Appellant.

B
P/S

APPENDIX

Submitted by

ROBERT J. HIRSCH, ESQ.

Attorney for Appellant

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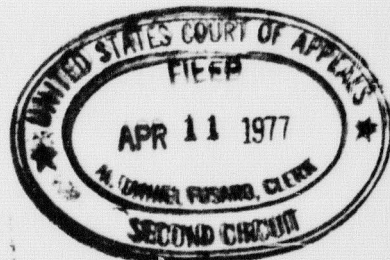
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Excerpts of Trial Transcript.

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INDICTMENT.

IN THE DISTRICT COURT OF THE UNITED STATES
For the Western District of New York

THE UNITED STATES OF AMERICA

May 1975 Session

-vs-

No.

SAMUEL L. MOSCHIANO

Vio. 18 U.S.C. 1623

FILED:

COUNT I

The Grand Jury charges:

1. That on or about October 9, 1975, in the Western District of New York, SAMUEL L. MOSCHIANO, the defendant herein, having duly taken an oath before the United States Grand Jury for the said District, which had been duly empaneled and sworn in the United States District Court for the said District, and which was then and there inquiring into matters involving violations of the laws of the United States, that he would testify truthfully, did unlawfully, knowingly and contrary to said oath make certain false material declarations as hereinafter described.

2. At the time and place aforesaid, the Grand Jury was conducting an investigation to determine whether there had occurred in the Western District of New York and elsewhere violations of the United States Code, to wit: Title 18,

A?

INDICTMENT.

United States Code, Sections 1341 and 1962 and any other criminal statutes of the United States.

3. It was material to the aforesaid inquiry to determine whether or not SAMUEL L. MOSCHIANO had on or about June 19, 1975, made certain statements to Special Agent Kenneth Olson, Federal Bureau of Investigation, relative to the payment of monetary amounts by Patrick Marrocco to Vincent Rallo for the purpose of causing and procuring arson.

4. At the time and place alleged in paragraph 1 herein, SAMUEL L. MOSCHIANO appeared as a witness before the said Grand Jury and having been placed under oath, did then and there testify falsely before the Grand Jury with respect to the said material matters as follows:

Q. Let me refresh your recollection because in June, when you were interviewed by Special Agent Olson, you stated at the settlement, Rallo received twenty-seven thousand dollars from Morrocco [sic] and twelve thousand dollars from yourself for a total of thirty-nine thousand dollars?

A. I did not say that.

Q. Are you saying you did not say that or that is a lie?

A. I am not saying it's a lie. I did not say it.

Mr. Olson told me that Mr. Rallo got twenty-seven thousand dollars from Mr. Morrocco [sic] but I never made the remark that he got twenty-seven thousand dollars from Mr. Morrocco [sic] because I don't know what he got from him. All I know is what he got from me.

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INDICTMENT.

Q. You never made any statement to Special Agent Olson that Rallo received approximately twenty-seven thousand from Morrocco [sic] and twelve thousand from you?

A. No sir, I did not make that statement. I made the statement about the twelve thousand from me, yes.

* * * * *

Q. Your statement that you also made to Special Agent Olson which is in the report of the interview of June, that Rallo received approximately twenty-seven thousand dollars from Morrocco [sic], did you make that statement?

A. I did not make that statement. Mr. Olson made that statement to me.

Q. Did you doubt that statement when he made it?

A. I didn't say nothing about it. That I doubt it, becuae I didn't know what Mr. Morrocco [sic] gave Mr. Rallo.

Q. You never made any such statement, you never made any such indication that Morrocco [sic] had given that money to Rallo?

A. No sir, never.

Q. If that statement was made to you by anybody else, did you nod your head or agree or state yes that is right?

INDICTMENT.

A. No sir, never.

5. The aforesaid testimony of SAMUEL L. MOSCHIANO as he then and there well knew and believed was not true in that he had personally made and confirmed the aforesaid statements to Special Agent Kenneth Olson, Federal Bureau of Investigation, relative to the payment of certain monetary amounts by Patrick Marrocco to Vincent Rallo.

All in violation of Title 18, United States Code, Section 1623.

COUNT II

The Grand Jury Further Charges:

1. That on or about October 9, 1975, in the Western District of New York, SAMUEL L. MOSCHIANO, the defendant herein, having duly taken an oath before the United States Grand Jury for the said District, which had been duly empaneled and sworn in the United States District Court for the said District and which was then and there inquiring into matters involving violations of the laws of the United States, that he would testify truthfully, did unlawfully, knowingly and contrary to said oath make certain false material declarations as hereinafter described.

2. At the time and place aforesaid, the Grand Jury was conducting an investigation to determine whether there had occurred in the Western District of New York and elsewhere

INDICTMENT.

violations of the United States Code, to wit: Title 18, United States Code, Sections 1341 and 1962 and any other criminal statutes of the United States.

3. It was material to the aforesaid inquiry to determine the cause and origin of the fire which occurred on or about January 26, 1970, at the Nickelodeon Tavern, 884 Emerson Street, Rochester, New York, and the involvement of Patrick Marrocco in causing that fire.

4. At the time and place alleged in paragraph 1 herein, SAMUEL L. MOSCHIANO appeared as a witness before the said Grand Jury and having been placed under oath, did then and there testify falsely before the Grand Jury with respect to the said material matters as follows:

Q. Now let me direct your attention to January, 1970, early in the month. Did you have an occasion to at that time to meet with Mr. Morrocco [sic] at the club?

A. I believe 1970 -- yes, I must have.

Q. This is at the Nickelodeon?

A. Yes.

Q. Did you meet him several times throughout the month in early January?

A. Yes.

Q. On one of these occasions that you met with him and

INDICTMENT.

conversed with him, did Mr. Morrocco [sic] ever make any statement concerning an arson to be performed at the club?

A. No sir.

Q. Let me make sure you understand the question. Mr. Moschiano, I am asking that as you have indicated you have met several times with Mr. Morrocco [sic]?

A. Yes.

Q. Early part of January, 1970, you met him in the club itself. Alright, now, what I have asked, did you at any time with Mr. Morrocco [sic] discuss the possibility of an arson or a fire at the club?

A. No sir.

Q. Mr. Morrocco [sic] never mentioned anything connected with such a subject; he never mentioned an arson at the club?

A. No sir.

Q. Did he ever make a statement that the building was going to be burned by arson because he needed to get money?

A. No sir.

Q. Do you understand my questions, Mr. Moschiano?

A. Yes.

Q. You understand exactly what I mean by arson?

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A. Yes sir.

Q. You understand I am talking about an arson at the Nickelodeon night club at 884 Emerson Street?

A. Yes sir.

* * * * *

Q. Now, you also reported to the Special Agent Olson that Mr. Morrocco [sic] told you that the fire was going to cost twenty-five percent of the fire on the insurance on the business and you told Morrocco [sic] that you felt that the price was too high, is that also what you told Special Agent Olson?

A. Yes.

Q. Was that also a lie?

A. Yes sir.

Q. Did you state to Mr. Morrocco [sic] that you did not want the building burned?

A. No, because we never had that conversation with Mr. Morrocco [sic].

5. The aforesaid testimony of SAMUEL L. MOSCHIANO as he then and there well knew and believed was not true in that he had been personally informed by Patrick Marrocco in approximately January, 1970, that the Nickelodeon Tavern would intentionally be destroyed by fire for the purpose of

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INDICTMENT.

collecting insurance proceeds and that the arson would cost twenty-five percent of the insurance settlement.

All in violation of Title 18, United States Code,
Section 1623.

RICHARD J. ARCARA
United States Attorney

A TRUE BILL:

FOREMAN

APPELLANT'S STATEMENT OF 6-19-75.

VOLUNTARY STATEMENT

PAGE 1 OF 2 PAGES

CITY or TOWN Rochester, STATE of NEW YORK, COUNTY of MONROE
 DATE June 19th, 1975 TIME 3:00 PM PLACE Monroe County Sheriff's Dept.
 I, Samuel Moschiano being duly sworn, am 60 years of age
 and my address is 196 North Goodman Street, Rochester, New York
 I have been duly warned by Inv. Jahn Kovack
 himself as Investigator with the Monroe County Sheriff's Dept. who has identified

that I have the right to remain silent and don't have to say anything if I don't want to; that anything I say can be used against me in a court of law; that I have the right to talk to a lawyer before making any statement and to have him here with me; that if I can't pay for a lawyer, one will be given to me before I make any statement, if I wish.

I understand what my rights are and am willing to make a statement. I do not want a lawyer at this time. No promises or threats have been made to me to induce me to make this statement.

I, Samuel Maschiano, residing at 196 North Goodman Street, Rochester, New York, and being 60 years of age make the following statements relative my involvement with Patrick Marrocco and others in the property located at 884 Emerson Street, Rochester, New York.

Around July 1969 I purchased the building and property located at 884 Emerson Street in the City of Rochester, known as the El Marracco Club, for \$22,000 from Patrick Maracco. The agreement made me the owner of the property, the business stayed in the name of Maracco. At the time of the purchase I insured the property with Vincent Rallo for \$135,000.

A while later Pat Marracco changed the name of the business to THE NICHELOLDIAN, but it was kept in his name.

I purchased the property which included the building housing the night club and the surrounding lot. It had been assessed for \$135,000 and to get into the property for \$22,000 seemed at the time a good investment at the time.

About two weeks prior to the fire of January 26th, 1970 which destroyed the building at 884 Emerson Street, Rochester, Patrick Maracco came to me in the club. Marracco was in financial trouble, I knew it and so did just about everyone. He told me that the place was going to be burned down for the insurance money. He was in debt and this was the only way out. He went on to say that he had the people lined up to do the job and that it would cost us about 25% of the insurance money for the job. I argued a while with him, explaining that I had been collecting the rent on the place and that things were going ok, he cut me short and said that the way it is going to be. I had no more conversation with Marracco about the place burning down until it happened on January 26th, 1970.

It was about two months after the fire that Marracco got a hold of me and told me we had to go out to the farm, Frank Valenti's house. He wanted to talk to us about the insurance money. When we got there we met with Frank Valenti, Vicent Rallo, Marracco and myself. Valenti was concerned as to why we had not yet gotten the insurance money and wanted know what the hold up was. I told him I would find out. The whole meeting didn't last a half hour.

About two or three days later I got a hold of Joe Crist, the Fire Adj who had contacted me just after the fire and was handling the insurance claim and adjustment. He told me that he was attempting to settle both my and Marracco's claim at the same time. I went back and told Marracco this. I have read my statement consisting of _____ page(s) and the facts contained therein are true and correct. I have also been told that swearing to a false statement can make me guilty of an additional crime.

Witness: William P. Mack

Witness: John F. Kovack

Samuel Moschiano
 (Signed by person making statement)

Subscribed and sworn before me

this 19th day of June 1975

George P. Chase
 Notary Public

GEORGE P. CHASE

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Notary Public

EXCERPTS OF TRIAL TRANSCRIPT.
Angelo Monachino for Government, Direct.

* * * * *

what it says on it exactly.

Q You are not sure what the foreman said to you in swearing you in?

A Pardon me?

Q You are not sure what the foreman said to you in swearing you in?

A In essence --

Q Not in essence you are not sure of what he said?

A Not verbatim, no, I'm not.

Q I assume you don't know what you said in answer to whatever the foreman said to you?

A Yes, I know what I said.

Q What did you say?

A "I do."

MR. HIRSCH: That is all.

MR. PARRY: No further questions.

THE COURT: Thank you, Mr. Sciolino.

(Witness excused.)

MR. PARRY: The Government calls Angelo Monachino.

ANGELO MONACHINO, 2146 Lehigh Station Road, Pittsford, New York, called as a witness on behalf of the Government, and being first duly sworn, testified as fol-

Excerpts of Trial Transcript.
Angelo Monachino for Government, Direct.

lows:

DIRECT EXAMINATION BY MR. PARRY:

Q. Mr. Monachino, what is your present occupation?

A. I'm unemployed right now.

Q. Prior to your becoming unemployed how did you support yourself?

A. Construction work, self-employed.

Q. That was in the Rochester area?

A. Yes, sir.

Q. Now, directing your attention to late 1969, early 1970, did you at that time know an individual by the name of Samuel Moschiano?

A. Yes, sir.

Q. And the individual that you know as Samuel Moschiano, do you see him in the courtroom here today?

A. Yes, sir.

Q. Would you point him out for us, please?

A. He is sitting there alongside of Mr. Hirsch.

Q. Can you describe what he has on?

A. Blue jacket with a brown shirt.

MR. PARRY: For the record, the witness has identified the defendant, Samuel Moschiano.

BY MR. PARRY:

Q. Now, in late 1969, early 1970, approximately how long had you known Mr. Moschiano?

Excerpts of Trial Transcript.
Angelo Monachino for Government, Direct.

- A. '69, approximately a year.
- Q. And during this period, again late 1969, early 1970, did you have occasion to frequent the premises at 884 Emerson Street, Rochester, New York?
- A. Yes, sir.
- Q. And what were the premises known as at the time?
- A. At one time it was the El Marrocco, then it become the Nickelodian.
- Q. And did you also know an individual by the name of Patrick Marrocco?
- A. Yes, sir.
- Q. And what was Mr. Marrocco's relationship with Mr. Moschiano?
- A. They were personal friends, and Sam invested quite a bit of money in Pat's operation.
- Q. Now, the Sam you referred to is Mr. Moschiano?
- A. Yes, sir.
- Q. And you say that Mr. Moschiano invested in Mr. Marrocco's operation, which operation was that?
- A. The El Marrocco.
- Q. Now, again during this period, late 1969, early 1970, did you have occasion to be present when Mr. Moschiano and Mr. Marrocco were discussing what was to become of the premises at 884 Emerson Street?
- A. Yes, sir, just before the holidays in 1969. Prior to that

Excerpts of Trial Transcript.
Angelo Monachino for Government, Direct.

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we had other conversations, but this one was in reference
to -- they had a mess up in the insurance and the place --

MR. HIRSCH: Objection, if the Court please. The witness
is testifying as to conclusions.

BY MR. PARRY:

Q To the best of your ability, Mr. Monachino, would you
first of all tell us who was present at this conversation?

A Myself, Mr. Moschiano and Mr. Marrocco.

Q Where did this conversation take place?

A At the place of business.

Q You've set the period at sometime in late 1969, just
prior to the Christmas holidays?

A Yes.

Q Would you recall the time of day?

A It was in the latter part of the afternoon.

Q And this was at the El Marrocco?

A Yes, sir.

Q Now, to the best of your ability, can you tell us, please,
what it was that Mr. Moschiano said, what it was that
Mr. Marrocco said, and what it was that you might have
said during the course of this conversation?

MR. HIRSCH: I object to the witness testifying as far as
what Mr. Marrocco said. I don't object as far
as the conversation between the witness and
the defendant.

Excerpts of Trial Transcript.
Angelo Monachino for Government, Direct.

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THE COURT: No, you may state what Mr. Marrocco said, but be sure that you don't state anything that was said by him when Mr. Moschiano was not present.

BY MR. PARRY:

Q You may continue.

A They were discussing about the insurance being disrupted at that particular time and that the place wasn't going to be able to be burned down --

MR. HIRSCH: I object to this unless we know who is making the statements.

THE COURT: We need to have your recollection of who said what, to the extent that you are able to do that.

THE WITNESS: Well, Pat was trying --

MR. HIRSCH: I object to what he was trying to do.

THE COURT: Yes. If you can remember, say what he said.

THE WITNESS: Pat was saying that he couldn't figure out why the insurance wasn't paid, and Sam says, "You know damn well why it wasn't paid, you didn't make the premium payment," and with that it was said that without the insurance that the place wasn't going to be burned down during the holidays.

BY MR. PARRY:

Q You say that prior to this time you had had conversations?

Excerpts of Trial Transcript.
Angelo Monachino for Government, Direct.

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A. Yes. It was a common thing, we knew about it about six months.

MR. HIRSCH: Objection, I move to strike.

THE COURT: Yes, that is sustained. The answer is stricken.

BY MR. PARRY.

Q Prior to this time you had had conversations concerning what was to become of the premises at 884 Emerson?

MR. HIRSCH: I object to the form.

THE COURT: It is a leading question.

BY MR. PARRY:

Q Can you tell us whether or not -- strike that. What, if any, conversations did you have with the defendant Moschiano prior to this occasion that you have just told us about?

A. Yes, I had seen him there a couple of times before, and we discussed about the place going down for the holidays.

MR. HIRSCH: I object, it is not responsive as to what Mr. Moschiano said to the witness and what the witness said to him. That is a summary.

BY MR. PARRY:

Q Mr. Monachino, to the best of your recollection, can you tell us when you had this conversation with Mr. Moschiano?

A. This was many times, I can't pick those out.

THE COURT: Approximately when?

THE WITNESS: Within the six months prior to that, sir.

Excerpts of Trial Transcript.
Angelo Monachino for Government, Direct.

THE COURT: This would have been late 1970?

THE WITNESS: The latter part of 1969.

THE COURT: 1969, right, yes.

BY MR. PARRY:

Q You say on several occasions you had conversations --

A Yes.

Q -- with Mr. Moschiano?

A Yes, sir.

Q And do you recall where these conversations took place?

A Either at the El Marrocco or at his coffee shop.

Q Where was his coffee shop?

A On Verona and Platt Street.

Q And are you able to recall any one particular instance that you had a conversation?

A No, sir, not on that.

Q You recall, however, that you did have conversations with him?

A Yes, sir, several times.

Q And do you recall what Mr. Moschiano on these occasions told you about the disposition of the premises at 884 Emerson Street?

A All he was concerned with was --

MR. HIRSCH: I object to what he was concerned with.

BY MR. PARRY:

Q What did he say, if you recall?

A He said, "All I want is my money out of it, I don't want

Excerpts of Trial Transcript.
Angelo Monachino for Government, Direct.

to make any money on the place, all I want is my money back."

Q And in regard now to his comment that all he wanted was his money back, could you put that into context for us, what was he referring to?

MR. HIRSCH: I object to the form of the question.

THE COURT: Yes. I don't understand the question. If you want to find out if there was other conversation with Mr. Moschiano or Mr. Marrocco, you may.

BY MR. PARRY:

Q When he said that he wanted his money back, was there any further explanation as to what he meant by his money?

A Well, the money that he had gotten on notes for Pat, and actually Sam was paying the interest on it.

Q And in regard now to getting his money back, did he explain to you how it was that he was going to get his money back?

A By the proceeds -- it would be the proceeds out of the fire.

Q Now, going back to the occasion in 1969, late '69 just before the holidays, I believe you testified that they were discussing -- Mr. Moschiano and Mr. Marrocco were discussing a problem with the insurance, is that correct?

A That is correct.

Excerpts of Trial Transcript.
Angelo Monachino for Government, Direct.

- Q. Now, was there any mention made at that time of the fire?
- A. Yes, sir.
- Q. Can you tell us, please, to the best of your recollection now what did Mr. Moschiano say and what did Mr. Marrocco say?
- A. Well, I told you what Pat said. Sam said, "If we don't get the insurance reinstated we are not going to get the full amount out of it, we won't be able to pay everybody off," that the sum of twenty-five per cent had to be paid on top of that, with that and the bills, he would never pay everybody.
- Q. The twenty-five per cent, what was said and by whom about the twenty-five per cent?
- A. Well, Sam said, "With the twenty-five per cent and all the bills we got, we can't pay everybody off if we don't have all the insurance." As it turned out, everybody didn't get paid anyway.
- Q. Well, going now to the twenty-five per cent, did anyone explain to you what they meant by the term "twenty-five per cent"?
- A. The twenty-five per cent was the amount of money --
- MR. HIRSCH: Objection, if the Court please, not responsive.
- THE COURT: Yes. Who said what and when?
- BY MR. PARRY:
- Q. Do you recall what --

Excerpts of Trial Transcript.
Angelo Monachino for Government, Direct.

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A. The twenty-five per cent?

Q. Do you recall what Mr. Moschiano or Mr. Marrocco, during this conversation now in December, 1969, said concerning this twenty-five per cent which you have mentioned already what was the twenty-five per cent, as they explained it to you?

A. As they explained it to me, the twenty-five per cent was the amount of money that had to be paid to the boys for doing the job.

Q. It was twenty-five per cent of what?

A. Of the total amount of the insurance received.

Q. Now, directing your attention to early 1970 --

THE COURT: Let's take a break at this point. We will recess for lunch and come back about five after one.

(Thereupon, the court was in recess at
12:05 P.M.)

Excerpts of Trial Transcript.
Angelo Monachino for Government, Direct.

PROCEEDINGS RESUMED, PURSUANT TO RECESS, COMMENCING AT 1:30
P.M.

(Defendant present, counsel present, jury
present.)

A N G E L O M O N A C H I N O , called as a witness
on behalf of the Government, and having been previously duly
sworn, resumed and testified further as follows:

THE COURT: Mr. Monachino, you can continue under oath.

THE WITNESS: Yes, sir.

DIRECT EXAMINATION BY MR. PARRY:

Q Mr. Monachino, directing your attention now to early
January of 1970, did you have occasion to be present
in other conversations between Mr. Marrocco and Mr.
Moschiano?

A Yes, sir.

Q And can you tell us, please, when -- strike that. Can
you tell us, please, where this conversation took place?

A At the El Marrocco.

Q And aside from you and Mr. Marrocco and Mr. Moschiano,
was anyone else present?

A There were other people there, not in the conversation,
no, sir.

Excerpts of Trial Transcript.
Angelo Monachino for Government, Direct.

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Q There were other people in the club?

A Yes.

Q Now participating in the conversation?

A No, sir.

THE COURT: Who was there at the conversation?

THE WITNESS: Myself, Mr. Moschiano and Mr. Marrocco.

THE COURT: All right.

BY MR. PARRY:

Q Can you tell us, please to the best of your ability now, what each of the participants in the conversation said?

A Well, Sam came in and Pat and I was already there, and Sam approached Pat and he said that everything has been taken care of with the insurance, with Mr. Rallo, and that he can proceed to tell the boys to go ahead with the burning of the place, that they would have enough money now, close to enough money to pay everything.

Q And again, when you say they would have enough money to pay, was any figure mentioned?

A There was a figure of twenty-five per cent.

Q And the Sam that you referred to, that is Mr. Moschiano?

A That is correct.

Q And the Pat that you referred to, that is Mr. Marrocco?

A That is correct.

Q Directing your attention again to January of 1970, did you have occasion to be present at the premises at 884

Excerpts of Trial Transcript.
Angelo Monachino for Government, Direct.

Emerson Street late in the month of January, 1970?

A. Yes, sir.

Q. Would you recall the day that you were present?

A. I believe it was -- my best recollection is it was January 25.

Q. And can you tell us, please, how it is that you fix this date in your mind?

A. That was the night that the fire went down.

Q. So the night before the fire occurred at 884 Emerson Street you were present, is that correct?

A. That is correct, sir.

Q. And can you tell us, please, what you observed -- strike that. Before we get into your observations on that day, could you describe for us the physical layout of the premises at 884 Emerson Street?

MR. HIRSCH: Objection, materiality.

MR. PARRY: I believe it will become material.

THE COURT: I will allow you some latitude, Mr. Parry.
Go ahead.

MR. PARRY: Thank you.

THE WITNESS: Yes, sir, I can.

BY MR. PARRY:

Q. Would you tell us, please, how the premises were laid out?

A. It was a block building that was on the north side of the street --

Excerpts of Trial Transcript.
Angelo Monachino for Government, Direct.

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THE COURT: More slowly.

THE WITNESS: -- on the north side of the street, and the entrance to the club was in front. You walk down a set of steps which looked like a cellar. As you walked in on the right-hand side there would be the bar. If you looked directly ahead, that is where the dining room was, and there was a balcony which used to be a bandstand, but the bandstand was moved over to the right-hand side of the dining room. If you went to the left you could have gone either to the kitchen or gone upstairs to what used to be offices.

BY MR. PARRY:

Q The upper portion you say there used to be offices, referring now to this evening of January 25, 1970, was the upper portion open to the public?

A No, sir.

Q Now, again going back to the evening of January 25, 1970, can you tell us, please, what you observed that evening at the premises at 884 Emerson Street?

MR. HIRSCH: Same objection, your Honor, materiality, as far as this indictment is concerned.

MR. PARRY: I would be happy to approach the bench and make an offer of proof.

Excerpts of Trial Transcript.
Angelo Monachino for Government, Direct.

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THE COURT: No, please. Has he stated who was present on this occasion?

MR. PARRY: No, he has not.

THE COURT: All right. I will allow the answer to this question. Would you like to have the question read?

MR. PARRY: Please.

(Thereupon, the last question was read by reporter.)

THE WITNESS: Well, business was as usual downstairs, and Pat said, "Come on, Ange, I want to show you something upstairs."

MR. HIRSCH: Objection, if the Court please.

THE COURT: I will sustain the objection.

BY MR. PARRY:

Q Without going into any conversations now, the question is what did you observe, what did you see?

A The place was open for business downstairs, and upstairs they had ripped walls out and everything else --

MR. HIRSCH: I object to "they had." It nowhere ties in with this defendant here.

THE COURT: That is true, there has been no association of this with Mr. Moschiano. Sustained.

Excerpts of Trial Transcript.
Angelo Monachino for Government, Direct.

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BY MR. PARRY:

Q Without going into who they are, would you tell us what you saw?

A Everything was prepared for the fire.

MR. HIRSCH: Objection, not responsive.

THE COURT: It is rather conclusory.

BY MR. PARRY:

Q What did you see? You said everything was prepared for the fire, what did you see?

A Walls were ripped out, windows were boarded up, debris was put up against the doors so the firemen couldn't get in, and a teepee was set up against the one wall.

THE COURT: A what?

THE WITNESS: A teepee was set up for a fire.

BY MR. PARRY:

Q What is a teepee?

A It's like an Indian hut which was put together with thin pieces of wood and filament paper, and you set a basket up, and eventually when you want it to come down you light a candle, it would burn about an hour.

Q The candle would be a fuse?

A It would be primarily set like a fuse.

Q Did you observe any combustible materials in addition to the teepee?

A Yes, sir, I did. What was in the boxes, I couldn't tell

Excerpts of Trial Transcript.
Angelo Monachino for Government, Direct.

you, but it smelled to high heaven.

THE COURT: Of what?

THE WITNESS: Gasoline, thinners, stuff like that.

BY MR. PARRY:

Q Now, directing your attention to the following day,
January 26, 1970, did you learn on that occasion that
a fire had occurred at 884 Emerson Street?

THE COURT: Leading.

MR. PARRY: I will withdraw it.

BY MR. PARRY:

Q Directing your attention to the following day, January
26, 1970, did you have occasion to return to the premises
at 884 Emerson Street?

A Yes, sir. Mr. Marrocco called me, and it was set up
prior to that that when the fire had burned that I was
going to board the building up for him.

MR. HIRSCH: Objection, not responsive. The question is
did he return.

THE COURT: It is a simple question, did you return?

THE WITNESS: Yes, sir.

THE COURT: The jury will ignore the rest of the answer.

BY MR. PARRY:

Q What was your purpose in returning to 884 Emerson Street?

A Mr. Marrocco called me and told me there was a fire.

MR. HIRSCH: I object to what Marrocco told him.

Excerpts of Trial Transcript.
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THE COURT: All right, the jury will ignore what he said.
You had a call from Marrocco?

THE WITNESS: Yes, sir.

BY MR. PARRY:

Q As a result of that call did you return to 884 Emerson Street?

A Yes, I did.

Q Can you tell us, please, what you observed on that occasion at 884 Emerson Street?

A That there was a bunch of firemen there and apparently there had been a fire.

Q In regard now to the dining room, which you had already described, did you see anything in the dining room?

A Well, I -- Pat was outside, I walked down the stairs with him, and as I went through the doorway, they had set up some chairs and tables that looked like another teepee which hadn't burned, and Mr. Naylor was there, and Mr. Marrocco introduced me to him, and said, "This is the fellow that is going to board the place up for me."

MR. HIRSCH: I object to what he said.

THE COURT: Yes, that will be stricken, the jury will ignore it.

BY MR. PARRY:

Q Now, directing your attention to June of 1975, how were

Excerpts of Trial Transcript.
Angelo Monachino for Government, Direct.

you employed in June of 1975?

A. Up until June 8 I was self-employed.

Q. And after June 8, 1975?

A. I was not employed.

Q. During the month of June, 1975, did you have occasion to work with the Monroe County Sheriff's Office and the FBI?

A. Yes, sir.

Q. Now, directing your attention to June 19, 1975, did you have occasion on that day to be present in the sheriff's office here in Rochester?

A. Yes, sir.

Q. Do you recall what portion of the sheriff's office that you were present in on that day?

A. In the Detective Bureau.

Q. And regard now to the Detective Bureau, did you go into any particular room in the Detective Bureau that you recall?

A. Yes, I was in just about most of the offices that day.

Q. You were in and out of all the various offices?

A. Yes, sir.

Q. Did you have occasion at one point to go into the office of Chief of Detectives William Mahoney?

A. Yes, sir, I did.

Q. And on that occasion did you have any conversation with

Excerpts of Trial Transcript.
Angelo Monachino for Government, Direct.

Mr. Moschiano?

A. Yes, sir, I did.

Q. Now, in regard to this conversation that you had with Mr. Moschiano, where was Mr. Moschiano located in the Sheriff's Office?

A. He was sitting on the couch in Mr. Mahoney's office.

Q. Can you give us a brief description of the physical layout of Mr. Mahoney's office at the Sheriff's Office?

A. As you directly walk in the door, on the left-hand side there is a couch, and adjacent to that there is a chair, and in front of that there is a desk.

Q. Now, you say that when you spoke with Mr. Moschiano that day he was seated on the couch?

A. Yes.

Q. When you first arrived to speak with Mr. Moschiano was anyone else present?

A. Yes, sir.

Q. Who was present?

A. Mr. Mahoney, I believe Kenny Olson was there, and Jack Kovack.

Q. The Mr. Mahoney you referred to is the Chief of Detectives?

A. Yes, sir.

Q. The Kenny Olson that you referred to, what did he do for a living?

A. I believe he was a FBI man.

Excerpts of Trial Transcript.
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- Q And Jack Kovack, what did he do for a living?
- A Works out of the Detective Bureau.
- Q Did you have any conversation with Mr. Moschiano while the other men were present?
- A Yes. We were discussing how each others families were, and stuff like that, small talk.
- Q Did there come a time when these gentlemen left the room?
- A Yes, sir, there did.
- Q And by "these gentlemen," I refer now to Chief Mahoney, Special Agent Olson and Detective Kovack.
- A Yes, sir.
- Q You were left alone with Mr. Moschiano in the office?
- A Yes, sir.
- Q Would you tell us, please, to the best of your ability now, what did Mr. Moschiano say to you and what did you say to him?
- A Well, I said to Sam, I said, "Sam, you know what's going on," and he said, "No, not really." I said, "Well, why don't you tell them the truth and get it over?" He said, "Ange, all I can say that the last day before the fire Pat told me that the place was going down whether I liked it or not." I said, "Sam, he might have told you that, but you knew about it a long time before."
- Q Did Mr. Moschiano make any reply to that statement?
- A No, sir.

Excerpts of Trial Transcript.
Angelo Monachino for Government, Cross.

Q Now, while you were present -- let me ask you this --
strike that. Was there any further conversation?

A Not with him and myself, no, sir.

Q While you were present at the sheriff's office that day
did you observe anyone make any threats to Mr. Moschiano?

A No, sir.

Q Did you observe anyone intimidate or harass Mr. Moschiano?

A No, sir.

Q Did you, yourself, threaten, intimidate or harass Mr.
Moschiano?

A No, sir.

Q One further question, Mr. Monachino, at the time you
spoke with Mr. Moschiano were you incarcerated in jail?

A No, sir.

MR. PARRY: You may inquire.

CROSS-EXAMINATION BY MR. HIRSCH:

Q Mr. Moschiano, before you came in here to testify, did
you review any notes?

THE COURT: Mr. Monachino.

THE WITNESS: Monachino.

MR. HIRSCH: I'm sorry, I do interchange those names. Mr.
Monachino.

MR. PARRY: Excuse me, I hate to interrupt, but for the
record, I want to make it clear that we are

Excerpts of Trial Transcript.
Angelo Monachino for Government, Cross.

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turning over one FBI 302 in connection with
this case. It is an interview with Mr.
Monachino which was conducted June 10.

THE COURT: Does that bear an exhibit number?

MR. PARRY: No, it does not, your Honor. This is strictly
3500 material. I could mark it as an exhibit
if you would like.

THE COURT: Do you want to read that first question and
answer, Mr. Noel?

MR. HIRSCH: Let me withdraw the question, your Honor.

THE COURT: All right.

BY MR. HIRSCH:

Q Mr. Monachino, before you came in here to testify did you
review any written material?

A Yes, sir.

Q What did you review?

A Notes that the FBI had with me, I read them.

Q When did you read them?

A Last week.

MR. HIRSCH: May I take a moment? This was just handed to
me.

THE COURT: Certainly, go ahead.

BY MR. HIRSCH:

Q Whatever you reviewed, Mr. Monachino, did you receive
from the prosecutor?

Excerpts of Trial Transcript.
Angelo Monachino for Government, Cross.

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A Yes, sir.

Q And in essence this was an interview which was conducted by Special Agents Olson and Hugh Higgins, is that correct?

A That is correct.

Q Now, did you read anything else other than that?

A No, sir.

Q And in what you read was my client's name mentioned in any fashion?

A I would have to read it again.

(Thereupon, document referred to was handed to witness.)

THE WITNESS: No, sir.

BY MR. HIRSCH:

Q Mr. Moschiano wasn't mentioned at all?

A Not in them notes. I didn't write the notes.

Q That is back in 1975?

A Yes, sir.

Q You said that you knew my client, Sam Moschiano?

A Yes.

Q How well did you know him?

A Well, enough. He worked for me for a while.

Q He worked for you for a while?

A Yes, sir.

Excerpts of Trial Transcript.
Angelo Monachino for Government, Cross.

- Q How long did he work for you?
- A (No response.)
- Q Well, a short period of time?
- A Six, eight months, maybe even a year.
- Q Did there come a time when you made a phone call to Mr. Moschiano to come down to the sheriff's office on your behalf? I will be more precise, would it be in the middle part of 1975?
- A Wait a minute.
- Q Well, I will be more precise than that, did there come a time in the year 1975 that you called Mr. Moschiano and asked him to come down and post bail for you and your wife?
- A This had to be in December of 1974, sir.
- Q All right, I am mistaken, December, 1974?
- A Yes, sir.
- Q And did Mr. Moschiano come down and help you out as a friend?
- A Oh, yes.
- Q He posted \$300. bail for you, did he not?
- A Yes, sir.
- Q And as a matter of fact, subsequent to that time didn't he offer to put up his home for your benefit?
- A Yes, sir.
- Q For bail?

Excerpts of Trial Transcript.
Angelo Monachino for Government, Cross.

- A. Yes, sir.
- Q. Did you consider yourselves good friends?
- A. Yes, sir.
- Q. Had you met one another as a result of your working relationship?
- A. Yes, sir, I met him through Pat prior to our working relationship.
- Q. Did you make any notes of this alleged conversation that you had that goes back some six years at this time?
- A. No, sir.
- Q. And you just recall what these individuals stated at that time from your memory?
- A. To the best of my recollection, yes, sir.
- Q. And you said that this conversation -- or you overheard these conversations sometime in the latter part of December, 1970 -- or 1969?
- A. Yes, sir.
- Q. And these discussions you also recall took place in the early part of 1970, January, 1970?
- A. Yes, sir.
- Q. And you made no notes of any of those conversations?
- A. No, sir.
- Q. At the time that you placed yourself in the El Marrocco, were you there for a social occasion?
- A. Yes, I used to go there quite frequently.

Excerpts of Trial Transcript.
Angelo Monachino for Government, Cross.

- Q Did you have anything alcoholic to drink while you were there?
- A I may have, yes, sir.
- Q Do you drink?
- A I have from time to time, yes, sir.
- Q And were there other customers in the business at the time that you say these conversations were going on?
- A Pardon me?
- Q Were there other customers in the El Marrocco when you say these conversations were taking place sometime in the latter part of 1969, around the holidays I believe you said?
- A Yes, sir.
- Q And the early part of 1970, January I believe you said?
- A Yes, sir.
- Q Do you remember specifically where these conversations took place in this restaurant?
- A At the bar, sir.
- Q At the bar?
- A Yes, sir.
- Q There were other people at the bar, were there?
- A Yes, sir.
- Q Including people that were behind the bar working?
- A Yes, sir, there should have been a bartender or barmaid.
- Q Did that take place in the nighttime?

Excerpts of Trial Transcript.
Angelo Monachino for Government, Cross.

- A. Late afternoon, sir.
- Q. Who mentioned the percentage of twenty-five per cent?
- A. This was discussed even prior to that, sir. The first time just prior to the holiday Sam mentioned that they had to have the rest of the insurance because they were aware of that, and that it was twenty-five per cent they had to pay.
- Q. You say that my client mentioned twenty-five per cent?
- A. Yes, sir.
- Q. This was around the holidays?
- A. Yes.
- Q. In this busy season?
- A. Prior to the holidays.
- Q. Did you know what portion, if any, that my client owned of this establishment?
- A. He owned the property.
- Q. Do you know how long he had owned the property?
- A. Not offhand, no, sir.
- Q. Do you know if he paid any money for the property?
- A. He borrowed money which he gave to Pat, which he was paying on the note.
- Q. Would you say that again?
- A. He borrowed money, put up collateral so that he could borrow money.
- Q. Who did?

Excerpts of Trial Transcript.
Angelo Monachino for Government, Cross.

- A. He gave the money to Pat.
- Q. Mr. Moschiano --
- A. Yes, sir.
- Q. -- put up money?
- A. Yes.
- Q. For what?
- A. So that he could lend it to Pat.
- Q. Are you saying he went to the bank and signed notes and obtained money from the bank, and turned the money over to Pat Marrocco?
- A. That is my understanding, yes.
- Q. What is the basis of your understanding?
- A. Conversations with Mr. Moschiano and Pat Marrocco.
- Q. Do you know the amount of money that Mr. Moschiano loaned to Mr. Marrocco?
- A. No, sir, not the full amount.
- Q. You did know that my client was not operating this business, is that correct?
- A. That is correct.
- Q. He had nothing at all to do with the operation of this business, is that correct?
- A. Well, he had quite a bit to do with it, not on the surface.
- Q. He rented the place to Mr. Marrocco, is that correct?
- A. He actually didn't rent it, all he did was take a quick deed back.

Excerpts of Trial Transcript.
Angelo Monachino for Government, Cross.

Q Do you know this?

A Yes.

Q Were you there at the time?

A Mr. Moschiano told me this himself.

Q Told you what?

A That he took the deed back just to protect himself for the money lent him.

Q In other words, he took back the property as security is what you are saying?

A Yes.

Q He had loaned Mr. Marrocco some money?

A Yes, sir.

Q And Mr. Marrocco transferred the property to him as security for the loan?

A Yes.

Q Similar to a mortgage?

A Yes, sir.

Q All right. Do you know how many mortgages there were on that restaurant?

A Quite a few.

Q Do you know how many?

A Al Rossi had one, Triple A Paving or Allocco boys had one, Mr. Moschiano, Carl Polizzi had some \$12,000. against it, and I think a bank had something against it too, sir.

Q Would that be Columbia Savings?

Excerpts of Trial Transcript.
Angelo Monachino for Government, Cross.

- A I couldn't tell you that exact bank.
- Q So I understand you, Mr. Moschiano was just one of several people that loaned money, as far as that business is concerned?
- A Yes, sir. They tried to help bail Pat out.
- Q There were a number of mortgages on it?
- A Yes, sir.
- Q You say that Mr. Moschiano stated, in words or substance, that all he wanted was his money back, he didn't want to make any money?
- A Yes, sir, that was what he was concerned about.
- Q When did he make that statement?
- A He told me many times.
- Q Did he tell you that in the presence of Mr. Marrocco?
- A No, sir.
- Q Did he tell you in the El Marrocco?
- A Yes, sir. He also told me at his place of business on Platt Street.
- Q What place of business?
- A The Little Restaurant.
- Q He ran a restaurant, did he?
- A Yes, sir, he was in there. I didn't know what the connection was, he was in there all the time.
- Q Did you know what those business arrangements were?
- A No, that was with another fellow.

Excerpts of Trial Transcript.
Angelo Monachino for Government, Cross.

- Q Did you hear my client state that everything was taken care of, that statement having been made to Mr. Rallo?
- A The statement was that -- he made the statement to Pat that he had taken care of everything with Mr. Rallo, as far as the insurance goes.
- Q Who is Mr. Rallo?
- A He was an insurance agent.
- Q What is his first name?
- A Vincent.
- Q Vincent Rallo?
- A Yes, sir.
- Q Was he present at that time?
- A No, sir.
- Q When was this conversation?
- A This was after the holidays, sir.
- Q That would be the early part of January?
- A Yes, sir.
- Q 1970?
- A Yes, sir.
- Q And your recollection allows you to go back that far?
- A Yes, sir.
- Q There came a time in June of 1975 -- strike that -- the early part of 1975 when you were arrested, is that correct?
- A Yes, sir.

Excerpts of Trial Transcript.
Angelo Monachino for Government, Cross.

- Q And at that time you say that there was an occasion when Mr. Moschiano came down to the Sherriff's Department?
- A Yes, sir.
- Q You were present?
- A Yes, sir.
- Q What time of the day was this?
- A He was there quite a bit of the day. I spoke to him late in the afternoon, sir.
- Q Do you know how long he had been there on that day?
- A He had been there a few hours.
- Q Do you know whether or not he had been there since about 9:00, 9:30 in the morning?
- A Yes, sir, could well be.
- Q Could well have been?
- A Yes, sir.
- Q At that time were you under arrest?
- A No, sir.
- Q You were not. And at that time were there other Sheriff's Deputies around the Sheriff's Department?
- A Yes, sir.
- Q Sheriffs, detectives?
- A Yes, sir.
- Q And you say when you first saw Mr. Moschiano he was in Detective Mahoney's office?
- A That is where I spoke to him, sir.

Excerpts of Trial Transcript.
Angelo Monachino for Government, Cross.

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- Q Did you say that Mr. Mahoney was in there at that time?
- A Yes, sir.
- Q Were there any other detectives in there at that time?
- A Yes, sir. At that time there was Mr. Olson, which he is with the FBI, I believe Jack Kovack was there, too.
- Q Had you spoken about this situation to Olson prior to the time you saw Mr. Moschiano in the sheriff's office?
- A Yes.
- Q You had given this information to Olson?
- A Yes. That is part of the notes there.
- Q You had also given the information to the Sheriff's Department?
- A Yes, sir.
- Q At the time that Mr. Moschiano was brought into the Sheriff's Department, the Sheriff and the FBI knew what you have just testified to here today?
- A Yes, sir.
- Q And do you know whether or not Mr. Moschiano was being interrogated as to what you had told the FBI and what you had told the Sheriff's Department?
- A Yes, sir.
- Q Did any part of this interrogation take place in your presence?
- A No, sir.
- Q How long did you spend with Mr. Moschiano on that day?

Excerpts of Trial Transcript.
Angelo Monachino for Government, Cross.

- A. We talked for a matter of five, ten minutes.
- Q. This is the 19th of June?
- A. Yes.
- Q. Was there any stenographer present when you had this conversation?
- A. No, sir.
- Q. Do you know whether the conversation was tape-recorded?
- A. No, sir, I don't know that.
- Q. Do you know whether or not the room was bugged in any manner?
- A. No, sir.
- Q. Were you called in by either the FBI or the Sheriff's Department to talk to Mr. Moschiano?
- A. I was there just about everyday, sir, at that particular time.
- Q. Incidentally, were you armed at that time?
- A. No.
- Q. Did you have a gun permit?
- A. Yes, sir.
- Q. After you had this conversation with Mr. Moschiano -- you said it took about five or ten minutes?
- A. Yes.
- Q. Did you thereafter leave the Sheriff's Department?
- A. No, sir, I walked out of Mr. Mahoney's office.
- Q. Where did you go?

Excerpts of Trial Transcript.
Angelo Monachino for Government, Cross.

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- A. In one of the other offices.
- Q. Did anyone go in with Mr. Moschiano after that?
- A. I couldn't tell you, there may have been.
- Q. Did you leave the area of Detective Mahoney's office?
- A. I was in the other offices.
- Q. Wherever you were, you did not have a view of Detective Mahoney's office?
- A. I didn't pay attention to what was going on.
- Q. Did you have a view of Mahoney's office?
- A. I may have been able to see it.
- Q. You don't recall anybody going in?
- A. People were going in and out, sir.
- Q. A number of people?
- A. I was taking care of other business.
- Q. Were there a number of people going in and out?
- A. Could have been.
- Q. I mean sheriff's deputies, FBI agents, and so forth?
- A. Yes, sir.
- Q. And over what period of time were these people going in and out of the Chief's office where Mr. Moschiano was located?
- A. I couldn't tell you. I didn't stay in that one office, the large office that is there, I took care of some other business in another office.
- Q. Can you give us some idea how long he stayed there?

Excerpts of Trial Transcript.
Angelo Monachino for Government, Cross.

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A. No, sir, I wasn't paying attention, I was doing some other things.

Q. You say in words or substance, and you correct me if I am wrong, that you told Mr. Moschiano, 'Tell them what they want to hear,' is that right, when you went in to talk to him?

MR. PARRY: Objection, that is not his testimony.

THE COURT: Overruled. The witness can answer whether or not it was what he said.

BY MR. HIRSCH:

Q. You said that is not what you said?

A. No, sir.

Q. What did you say?

A. I told him, "Sam, why don't you just tell them the truth, tell them what you know about it."

Q. Did you also say, 'Tell them what you know about it and you can get out of here?'

A. No, sir.

Q. You didn't say that?

A. No.

Q. Do you remember that?

A. Postively, sir.

Q. Did you say, "If you don't tell them what they want to hear, you won't go home, period."

A. No, sir.

Excerpts of Trial Transcript.
Angelo Monachino for Government, Cross.

- Q In words or substance?
- A No, sir.
- Q Do you know whether or not Mr. Moschiano was under arrest at that time?
- A No, sir.
- Q Do you know how he got down to the Sheriff's Department?
- A I think he came of his own free will.
- Q You are not sure of that?
- A I am pretty sure, I am pretty sure.
- Q What is your basis for that?
- A Just from what I had heard.
- Q What did you hear?
- A That they had called him and he came down of his own free will.
- Q Voluntarily came down?
- A Yes.
- Q Did you know that he had been down the day before the 19th of June, 1975?
- A I believe I did.
- Q Did you see him that day?
- A I may have. I think I'd seen him.
- Q Do you remember whether or not you saw him on the 18th day of June, 1975?
- A I think I did. All I did was say hello to him.
- Q You are not sure?

Excerpts of Trial Transcript.
Angelo Monachino for Government, Cross.

- A. Yes, I did see him.
- Q. Now you are sure?
- A. Yes, sir.
- Q. Where was he at that time?
- A. When I had seen him, and said hello to him, he was sitting at a chair by the receptionist desk.
- Q. What did he say to you?
- A. "Hello, how is everything?"
- Q. Did you have any other conversation?
- A. No, sir.
- Q. How long had it been since you had seen him prior to the 18th of June, 1975?
- A. Prior to that, I believe I'd seen him in April.
- Q. You were good friends?
- A. Yes.
- Q. And you just said hello and good-by?
- A. Yes, sir.
- Q. You say that when you had this conversation with Mr. Moschiano, as you have stated here, he didn't respond in any way to you, is that correct?
- A. No. The only way he responded is that --
- Q. Did he respond to you, did he verbally respond to you?
- A. Yes, sir.
- Q. Didn't you just testify on direct examination when you made these statements that he didn't -- he made no re-

Excerpts of Trial Transcript.
Angelo Monachino for Government, Cross.

sponse?

A. Sir, he did respond.

Q. He did?

A. Yes, sir.

Q. What did he say?

A. That all he knew about it was that Pat had told him on the day that it was going to be burnt down that it was going to be burnt down whether he liked it or not.

Q. This is something Marrocco told to him?

A. That is right, sir. That's what he told me.

Q. Didn't you just testify to -- strike that. Didn't you just testify that he made no response to some conversation that you had with him?

A. No, sir, you better check that.

Q. We will check it. Now, you were not there during the entire period of this interrogation that you have testified to, whatever period of time?

A. The only period I was there --

Q. When you say -- I'm sorry.

A. The only period of time that I was there is for the conversations that I had with him that I told you about.

Q. As far as any threats and harassment is concerned, other than the five or ten minutes that you were with him, you are not aware of?

A. No, sir.

Excerpts of Trial Transcript.
Angelo Monachino for Government, Cross.

- Q Have you ever been involved in a murder?
- A Yes, sir.
- Q You have been involved in a murder?
- A Yes, sir.
- Q Were you involved in the James Massaro murder?
- A Yes, sir.
- Q Were you charged in the James Massaro murder as being a murderer?
- A No, sir.
- Q As being a conspirator, as being part of a conspiracy to murder James Massaro?
- A No, sir.
- Q You were never charged with that?
- A No, sir.
- Q Did you receive immunity for that?
- A That is correct, sir.
- Q But you were involved in it?
- A That is correct, sir.
- Q You were involved in the Bar-Mon Construction Company?
- A Yes, sir.
- Q You were the one that made the phone call that lured Jimmy Massaro out to Bar-Mon Construction Company where he met his fate, is that right?
- A That is correct, sir.
- Q Now, were you also -- strike that. Did you also receive

Excerpts of Trial Transcript.
Angelo Monachino for Government, Cross.

immunity for the Constable murder, the William Constable murder?

A. That is correct, sir.

Q. And as far as the William Constable murder is concerned, did you give a false affidavit to a member of the New York State Police Department out of Canandaigua, New York pertaining to the Constable murder?

A. Yes, I did.

Q. And you lied under oath at that time, did you not?

A. I had to, sir.

Q. I'm not asking you that. You did lie under oath?

A. Yes, sir. I said I had to, sir.

Q. And you have been involved in a few miscellaneous situations of possession of stolen property, such as a mink coat, is that correct?

A. That is correct, sir.

Q. And you have also recieved immunity not only for the murders that you have testified to, but you received immunity also for conspiracy to murder the sheriff of the County of Monroe, William Lombard?

A. That is correct, sir.

Q. You have also received immunity for the conspiracy to murder the Chief of Detectives, William Mahoney?

A. That is correct, sir.

Q. Are you married, sir?

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A. Yes, sir.

Q. Have you ever been divorced?

A. Yes, sir.

Q. How many times have you been divorced?

MR. PARRY: Objection, irrelevant.

THE COURT: Sustained.

BY MR. HIRSCH:

Q. Have you ever committed adultery in the State of New York?

MR. PARRY: Objection.

THE COURT: Sustained. The jury will ignore the
questions.

BY MR. HIRSCH:

Q. Did you have a conversation with an Assistant United
States Attorney by the name of Gregory Baldwin pertaining
to immunity?

A. Yes, sir.

Q. Was that in June of 1975?

A. Yes, sir.

MR. HIRSCH: Thank you, sir.

REDIRECT EXAMINATION BY MR. PARRY:

Q. Mr. Monachino, I would like to go back over a few points
that were raised with you on cross-examination. In re-
gard now to the report of interview which you were shown
by Mr. Hirsch, Mr. Hirsch asked you if his client's name

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appeared anywhere in that 302, and you answered no, it did not, is that correct?

A. It doesn't, sir.

Q. Can you tell us when you were interviewed?

A. On this? This was on the 10th.

Q. You were interviewed June 10, 1975 by Special Agents Olson and Higgins of the FBI?

A. Yes, sir.

Q. This interview, did they interview you just this one time or did they interview you many times?

A. I discussed many, many things with them. I didn't know what notes they were taking.

Q. In regard to the questions they were asking you during the interviews, did all of the questions relate to this one fire at 884 Emerson Street?

MR. HIRSCH: Objection, counsel is going beyond the cross-examination, going into matters not covered by cross-examination. I merely --

THE COURT: Sustained.

BY MR. PARRY:

Q. When you were interviewed in connection with the fire at 884 Emerson Street, did either Special Agent Higgins or Special Agent Olson put the direct question to you as to what, if any, conversations you might have witnessed between Mr. Moschiano and Mr. Marrocco?

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- A. I might have discussed it, it is not on the notes.
- Q. Can you recall whether or not they did ask you?
- A. No, sir.
- Q. This questioning period that you were going through, could you tell us how long it lasted?
- A. It lasted for days, discussing many things.
- Q. Day after day of being interviewed?
- A. Yes, sir.
- Q. You also testified on cross-examination that Mr. Moschiano loaned Mr. Marrocco a substantial amount of money, is that correct?
- A. That is correct, sir.
- Q. You also testified that there were several mortgages on the property at 884 Emerson Street?
- A. That is correct.
- Q. Now, after the fire at 884 Emerson Street, did you ever have occasion to speak with Mr. Moschiano about whether or not he made any money on this fire?
- A. No, sir. In fact, even until today I don't think he made any money.
- Q. Do you know whether or not Mr. Marrocco made any money?
- MR. HIRSCH: Objection, irrelevant.
- THE COURT: Yes, not covered by the cross-examination.
- MR. PARRY: I will withdraw that question.
- BY MR. PARRY:

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Q In your conversations with Mr. Moschiano, did he ever offer to you any explanation as to why he loaned this money to Mr. Marrocco?

A They were good friends, and Sam has been in the habit of helping a lot of people.

Q In your conversations with Mr. Moschiano, did he offer to you any explanation as to why he went along with this fire?

MR. HIRSCH: Objection, there's no testimony here that he did go along with this fire.

THE COURT: That is true, sustained.

BY MR. PARRY:

Q Well, you testified previously that Mr. Moschiano had told you that he had been advised by Mr. Marrocco that the building was going to burn down, and there was nothing that he could do about it, is that correct?

A Yes, that was in June, but I know different, that he was well aware that the fire was going to happen prior to that, sir.

Q In regard now to the conversation that you had with Mr. Moschiano on June 19, 1975, the question came up whether or not Mr. Moschiano made any response to you, and would you tell us again, please, what it was that Mr. Moschiano said to you in the Sheriff's Office and what you said to him?

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MR. HIRSCH: Objection, repetitious.

THE COURT: Sustained.

BY MR. PARRY:

Q In answering Mr. Hirsch's question, did you state at the end of the conversation when you pointed out to Mr. Moschiano that even though Mr. Marrocco might have made the statement about the fire on the day of the fire or the day before the fire, that he in fact-- that he, Mr. Moschiano, knew about the fire prior to that, did Mr. Moschiano make a statement at that time?

THE COURT: Excuse me?

MR. HIRSCH: Objection, your Honor. He is asking what he testified to as far as cross-examination is concerned, this isn't new material.

MR. PARRY: I believe there is a slight area of confusion, and it might be helpful to straighten it out.

MR. HIRSCH: I object to that classification of confusion, that is for the jury to decide.

THE COURT: No, I don't think there is any need for clarification. I think the story has been told.
I will sustain the objection.

BY MR. PARRY:

Q Now, you were asked by Mr. Hirsch about your involvement in the Massaro murder, is that correct?

A That is correct, sir.

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Q. Can you tell us, please, who were the participants in that murder in addition to yourself?

A. It was --

THE COURT: Are we going to try that case?

MR. HIRSCH: I object to that.

MR. PARRY: There is a connection involved here, Judge. I think defense counsel has opened the door. I am sure he raised the question in everyone's mind.

THE COURT: The whole pertinency of it, ladies and gentlemen, the whole pertinency of allowing the question to be put to Mr. Monachino and letting him answer is the extent to which any such involvement might bear upon Mr. Monachino's present credibility, and beyond that we are not at all concerned.

MR. PARRY: May I be heard outside the presence of the jury?

THE COURT: All right, we will take a recess, ten minutes.

(Thereupon, the jury exited the courtroom at 2:21 P.M.)

MR. PARRY: If it please the Court. Your Honor, our theory of this case, which is going to be opposite to

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that of the defendant, is that in fact Mr. Moschiano had several motives to testify falsely before the grand jury, not the least of which is that he was extremely afraid of Mr. Marrocco, he was afraid of the other participants in this arson ring. Now, many of the participants in the arson ring were in fact involved with Mr. Monachino in the Massaro murder. I think it would establish or tend to establish his motive for his false testimony. I think that since counsel has opened the door into the Massaro murder that we should be able to get into it to establish who the participants were and tie them into the arson ring, and the same would be true of the Constable murder.

MR. HIRSCH: May it please the Court, I merely brought up the Constable murder and the Massaro murder, as well as the stolen property, and as well as the affidavit, only as to the question of credibility of the witness. Other than that these become as I see it, collateral situations.

THE COURT: I think Mr. Hirsch is right, Mr. Parry. It is quite possible -- I wouldn't say yes or no right now -- it is quite possible that your

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contention that some showing of motivation growing out of these other associations might be pertinent and allowable, but what Mr. Hirsch has done is merely to bring these out as bearing upon Mr. Monachino's credibility, and now you want to use that to crack the door, to go into the same events for other purposes, which might have well been gone into on direct, at least we would have decided whether it would or would not. I think we would broaden the whole scope too much to get into it at this juncture. Perhaps you will have other testimony where you will try to bring that out, I don't know. It certainly is no part of redirect.

MR. PARRY:

May I do this then, your Honor? May I hold this witness in reserve and if at a later time during the trial it should develop in some way you might deem this to be more relevant than it appears at this time, may I recall Mr. Monachino for that purpose at a later time, depending on how the evidence develops?

THE COURT:

If the case developed in some way that I would consider it to be surprising to you as the prosecuting attorney, then, of course, I would

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allow him to come back on the stand for some such purpose, otherwise I think that if there is pertinency in such line of examination and such testimony, it ought to have been part of your direct examination.

MR. PARRY: Very well, your Honor. I think with that I have concluded my redirect examination of Mr. Monachino.

THE COURT: Mr. Hirsch, are you going to have any recross?

MR. HIRSCH: No, your Honor.

THE COURT: All right. We will take a brief recess.

(Thereupon, the court was in recess at 2:25 P.M.)

(Proceedings resumed, pursuant to recess, commencing at 2:40 P.M.)

(Defendant present, counsel present, jury present.)

K E N N E T H R . O L S O N , 58 Cole Road,
Pittsford, New York, called as a witness on behalf of the
Government, and being first duly sworn, testified as follows:

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DIRECT EXAMINATION BY MR. PARRY:

Q Mr. Olson, what is your occupation, please?

A Special Agent, Federal Bureau of Investigation.

Q How long have you been an FBI agent?

A Twelve years.

Q Directing your attention now to June 19 -- strike that. Directing your attention now to June 18, 1975, did you have occasion on that day to be present in the Monroe County Sheriff's Office?

A Yes, sir.

Q And do you recall approximately what time of day it was that you were present in the Sheriff's Office?

A The afternoon.

Q At that time were you in the process of conducting an official investigation?

A Yes, I was.

Q Now, again directing your attention to June 18, 1975, did you on that day have occasion to see Samuel Moschiano?

A Yes.

Q And the person that you saw that day, do you see him in the courtroom today?

A Yes, I do.

Q Would you point him out, please?

A (Indicating.)

Q Could you describe what he has on?

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A. He has on a blue denim jacket and a brown turtle neck.

MR. PARRY: For the record, the witness has identified
the defendant, Samuel Moschiano.

BY MR. PARRY:

Q Now, on this occasion when you saw Mr. Moschiano was any
one else present?

A. Yes.

Q Who was present?

A. Detective Jack Kovack, Monroe County Sheriff's Office.

Q And were you and Mr. Kovack and Mr. Moschiano together
in a room somewhere in the Sheriff's Office?

A. Yes, we were in an office of the Detective Bureau,
Sergeant Clapp's office.

Q Would you tell us, please, what transpired on this
occasion, June 18, 1975?

A. Detective Kovack and I were attempting to interview
Mr. Moschiano concerning his knowledge of an alleged
arson which occurred at the El Marrocco Nightclub. We
were in Sergeant Clapp's office attempting to interview
Mr. Moschiano.

Q Now, on this occasion did Mr. Moschiano make any state-
ment to you?

A. Mr. Moschiano talked to us. We did not get into any
specific information, and we suggested that we would
talk to Mr. Moschiano at a later date, that we had

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certain information from Mr. Monachino and we were trying to substantiate and corroborate that information.

Q Did your Detective Kovack indicate to Mr. Moschiano the precise nature of this information that you had from Mr. Monachino?

A As I recall, we told Mr. Moschiano that we had information that he had knowledge of the arson, and that we wanted to interview him concerning any knowledge he might have concerning the arson.

Q Now, thereafter did you have occasion to see Mr. Moschiano again?

A Yes.

Q When did that occur?

A On the following day, on the 19th.

Q And again, where did you see Mr. Moschiano on the 19th of June, 1975?

A I saw Mr. Moschiano in the office of the Chief of Detectives, Detective Bureau, Monroe County Sheriff's Office.

Q That is Chief of Detectives William Mahoney?

A Yes, sir.

Q Where in Mr. Mahoney's office was Mr. Moschiano?

A Mr. Moschiano was seated on the sofa in Detective Mahoney's office.

Q At the time -- by the way, do you recall the approximate

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time that you went to the sheriff's office to talk with Mr. Moschiano?

A. Approximately 1:30 in the afternoon.

Q. At that time who else was present?

A. Detective Kovack, Monroe County Sheriff's Office, and, subsequently, Detective William Marks, Monroe County Sheriff's Office.

Q. Can you tell us, please, on that occasion precisely what it was that Mr. Moschiano told you during the course of that conversation or that meeting?

A. I can't recall without refreshing my recollection.

Q. Is there any document that would refresh your recollection?

A. Yes, sir, my report of interview on that date.

Q. I show you what has been marked previously as Government's Exhibit 3, and I ask you if you can identify this document for us, please?

A. This is the document containing the results of interview with Mr. Moschiano on June 19.

Q. Is that your report of interview?

A. Yes.

Q. Now, when you questioned Mr. Moschiano on the 19th of June, did you take notes?

A. Yes, I did.

Q. What did you do with those notes?

A. I had the notes transcribed into this document, and

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destroyed my notes, per standard operating procedure of the FBI.

Q. You say the note , however, were transcribed into this document which you have before you, Government's Exhibit 3?

A. Yes.

Q. Would you examine that document, please, and, if possible, refresh your recollection as to what Mr. Moschiano related to you on that day during the conversation that you had with him?

A. Mr. Moschiano told me that he was --

MR. HIRSCH: Excuse me. I object to it, your Honor. The witness is refreshing his recollection.

THE COURT: You may read the document, but it aside, and then testify from your refreshed recollection.

THE WITNESS: Mr. Moschiano told me that he was employed by the Frank Damino Construction Company in Rochester. He told me that he met Pat Marrocco in 1967 at a bowling party in Rochester.

MR. HIRSCH: I object to it, if the Court please. The witness is reading the document. I don't object if he wants to read it and refresh his recollection.

THE COURT: Read it all to yourself, if you want, read it to yourself and put it aside.

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THE WITNESS: Do it all at once?

THE COURT: Do it all at once.

BY MR. PARRY:

Q Have you had an opportunity to refresh your recollection?

A Yes.

Q Now, Special Agent Olson, did you and the Sheriff's detectives on June 19, 1975 question Mr. Moschiano about the arson at 884 Emerson Street?

A Yes.

Q And do you recall -- having refreshed your recollection on it -- do you recall what, if anything, Mr. Moschiano said concerning a conversation or conversations that he had with one Patrick Marrocco relative to that fire?

A Mr. Moschiano told us that he had a conversation with Pat Marrocco at the El Marrocco Nightclub on an evening in early January, 1970, wherein Mr. Marrocco told him that the club was going to be burned. Mr. Moschiano said that he told Mr. Marrocco that he did not want the club burned, he liked the arrangement the way it was, with him owning the property and Mr. Marrocco owning the club, the business, and Mr. Marrocco told him it had to go down, and walked away from him, terminating the conversation.

Q Now, did Mr. Moschiano advise you as to the cost of the fire that took place?

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- A. Mr. Moschiano told me that twenty-five per cent of the insurance proceeds had to be paid for the fire being caused.
- Q. And did he indicate to you to whom the twenty-five per cent of the insurance proceeds were to be paid?
- A. The insurance proceeds were to go to the farm at Henrietta, which he understood to mean the residence of Frank Valenti.
- Q. Now, relative to the money that was paid -- strike that. Relative to the discussion that you had about this money, did he indicate to you any monetary amounts, dollar amounts that were paid for this fire?
- A. Yes.
- Q. Can you tell us, please, what he had to say about that?
- A. He said that an insurance settlement was made in the office of his attorney, Vincent Trinker, in Rochester some months following the fire, and that monies were given to Vincent Rallo in the office of Mr. Trinker, which Rallo was to take to the farm in Henrietta.
- Q. Did Mr. Moschiano tell you how much money was given to Mr. Rallo?
- A. Yes. He said Mr. Marrocco gave the \$27,000. to Mr. Rallo and he gave \$12,000. to Mr. Rallo.
- Q. Now, while you were present during this questioning of Mr. Moschiano, you testified that Detective Kovack and Detective Marks were present, is that correct?

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A. Yes.

Q. What was Detective Marks doing while you and Detective Kovack were questioning Mr. Moschiano?

A. Detective Marks -- we went through an interview with Mr. Moschiano, and then Detective Kovack summoned Marks to type a statement for the Sheriff's Office. He, Detective Marks, came into Chief Mahoney's office and typed a statement for the Sheriff's Office on the typewriter in the office.

Q. After the statement was typed, were you present when the statement was given to Mr. Moschiano?

A. No, I was not.

Q. Showing you now what has been marked as Government's Exhibit 4, I ask you to examine that document. Can you tell us, please, whether or not that is the statement that you saw prepared that day by Detective Marks?

THE COURT: Did you ever see the statement you saw Marks working on?

THE WITNESS: I saw Marks typing it, yes, sir. This appears to be the statement.

BY MR. PARRY:

Q. You say, however, that you do not recall being present when this statement was signed, is that correct?

A. I was not.

Q. Now, Special Agent Olson, directing your attention to

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both June 18 and June 19, 1975, these occasions when you had contact with Mr. Moschiano at the Sheriff's Office, while you were present did you or anyone in your presence threaten or intimidate or coerce Mr. Moschiano in any manner whatsoever?

A. No, sir.

Q. Did you speak harshly to Mr. Moschiano?

A. No.

Q. Did you ever make any statement to him, either in these words or in this substance, did you ever tell Mr. Moschiano that if he did not --

MR. HIRSCH: I object, if the Court please. This is --

THE COURT: Sustained.

MR. HIRSCH: -- quite leading.

MR. PARRY: Well, Government's Exhibit 2, which is the grand jury transcript, Mr. Moschiano's testimony --

THE COURT: So?

MR. HIRSCH: That is not in evidence, if the Court please.

BY MR. PARRY:

Q. Did you ever tell Mr. Moschiano that he could not go home until he told you what you wanted to hear?

A. I did not.

Q. Did anyone in your presence ever tell him that?

A. No one in my presence.

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Q Directing your attention to September 25, 1975, did you have occasion on that day to place Mr. Moschiano under arrest?

A Yes.

Q This was in connection with what matter?

A With his appearance before the federal grand jury.

THE COURT: What date was that?

MR. PARRY: September 25, 1975.

BY MR. PARRY:

Q On that occasion did you execute a remand order issued by Judge Burke?

A Yes.

MR. HIRSCH: I object, your Honor, not probative as far as this indictment is concerned.

THE COURT: That is certainly true, sustained.

BY MR. PARRY:

Q On this occasion when you had contact with Mr. Moschiano what, if any, statement did you make to Mr. Moschiano relative to his refusal to testify before the grand jury?

A I asked Mr. Moschiano if he was having any trouble with anyone, and if I could be of any assistance or any help to him to let me know.

Q Did Mr. Moschiano make any statement to you?

A No, sir.

MR. PARRY: You may inquire.

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CROSS-EXAMINATION BY MR. HIRSCH:

Q Mr. Olson, did you first come in contact with my client in the Sheriff's Department?

A Yes, sir.

Q Prior to the time that you came in contact with him, had you talked to Angelo Monachino?

A Yes.

Q Had you talked to Angelo Monachino on the 10th day of June, 1975?

A I seem to recall that I did, yes.

Q And at that time did Angelo Monachino tell you about the situation pertaining to the El Marrocco arson, alleged arson?

A He may have, he was discussing arsons.

Q Yes. Did he also discuss an insurance agent by the name of Vincent Rallo?

A Yes, sir.

Q Did he also tell you at that time that Vincent Rallo was an insurance man?

A Yes, sir.

Q Did you also have information to the effect that \$27,000 was paid to Vincent Rallo?

A I don't know that I had the figure.

Q You had the figure certainly before you talked to my client, Mr. Moschiano, did you not?

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- A. I may have, sir. I would have to refresh my recollection.
- Q. Did you also have the figure of \$12,000. that was allegedly paid by my client to Mr. Rallo before talking to my client?
- A. I don't recall that I had the specific figures.
- Q. You had some conversation with Mr. Angelo Monachino pertaining to monies allegedly paid to Vincent Rallo, is that correct?
- A. Yes, sir.
- Q. You had information about the El Marrocco alleged arson or the fire, is that correct?
- A. Yes.
- Q. All of this information, would it be fair to say, you gained from Angelo Monachino?
- A. Yes.
- Q. You knew that -- did Angelo Monachino at that time have immunity?
- A. Yes, he did.
- Q. Was Gregory Baldwin present at any time when you interviewed Angelo Monachino?
- A. I interviewed and participated in the debriefing of Angelo Monachino for approximately five days, and during that period Mr. Baldwin was present on occasion.
- Q. As far as that debriefing is concerned -- strike that. As part of the debriefing Angelo Monachino discussed the

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situation with Mr. Marrocco, is that correct?

A. Could you repeat that?

MR. HIRSCH: Read it, please?

(Thereupon, the last question was read by
reporter.)

THE WITNESS: He mentioned Marrocco's name, yes, sir.

BY MR. HIRSCH:

Q. He also mentioned a figure of twenty-five per cent, did
he not, of any proceeds?

A. Yes, sir.

Q. So that before you talked to Mr. Moschiano on the 18th
you knew about the El Marrocco situation, the fire?

A. Yes.

Q. You knew about the twenty-five per cent, right?

A. Yes.

Q. And most of this information, as you said, you gained
from the so-called debriefing of Angelo Monachino?

A. Yes, sir.

Q. Now, the Sheriff's Department -- strike that. Do you
know whether or not members of the Sheriff's Department
had similar information?

A. Members of the Sheriff's Department were present at the
same debriefing I was at, yes, sir.

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Q. And what members of the Sheriff's Department were there, sir?

A. Chief of Detectives Mahoney was present --

Q. Lieutenant Kennerson?

A. Lieutenant Kennerson, Sergeant Russello --

Q. Detective Marks?

A. Detective Marks, Detective Kovack.

Q. It is fair to say that on the 18th and the 19th of June, 1975, when you had this conversation with my client, you had information about the El Marrocco, as did the Sheriff's Department?

A. Yes, sir.

Q. Mr. Olson, did you say you arrived there about 1:30 in the afternoon?

A. It was after lunch, yes, sir.

Q. I believe you said at that time my client was on a couch in Detective Mahoney's office?

A. Yes.

Q. Was he alone?

A. Detective Kovack was in the room also.

Q. Do you know how long my client had been there at that time?

A. No, sir.

Q. Do you know if Mr. Moschiano arrived after noon?

A. I don't know.

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- Q After twelve noon?
- A I don't know.
- Q At any rate, you spent, did you say, five or ten minutes with him on the first day, on the 18th?
- A Probably longer than that, probably twenty minutes, thirty minutes perhaps.
- Q Did you discuss with him at that time what you had learned in the debriefing of Angelo Monachino?
- A Briefly, yes, sir.
- Q And were the members of the Sheriff's Department with you at that time also?
- A Kovack was with me and Sergeant Russello was there briefly.
- Q Is it fair to say they discussed what they had learned during the debriefing, as well?
- A Yes, sir.
- Q Do you know how Mr. Moschiano arrived at the Sheriff's Department on the 18th of June?
- A On the 18th of June, as I recall the events, he was phoned by someone in the Sheriff's Office, and asked to come in, and he came in on his own.
- Q He was not under arrest?
- A No, sir.
- Q Under formal arrest, is that correct?
- A That is right.
- Q Before you spoke with him on the 18th of June, 1975, did

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you read him what is known as the so-called rights, that he had a right to an attorney, and so forth?

A. I did not. Detective Kovack advised him of his rights verbally.

Q. Was he the target of an investigation at that time?

A. Not in my opinion he was not.

Q. Was there a stenographer present?

A. No, sir.

Q. Was anyone taking notes in your presence?

A. I was attempting to take notes.

Q. How about the Sheriff's Department? When I say, "the Sheriff's Department," I mean any detective in there.

A. Yes, Detective Kovack.

Q. He was taking notes?

A. Yes.

Q. As far as the 18th is concerned, after five or ten minutes -- strike it -- longer than that, you said he thereafter went home?

A. Did I go home?

Q. Did he go home?

A. He left the office.

Q. Were you there at the time he left?

A. I don't recall if I was there or not. I left shortly thereafter.

Q. Okay. As far as the 18th is concerned, no specific

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information was obtained from him, is that correct?

A. That is correct.

Q. And you said that you talked to him later or you may talk to him later?

A. That is right.

Q. Did you have an appointment to talk to him on the following day?

A. I did not.

Q. Was Angelo Monachino in the Sheriff's Department at the time that you were there on the 18th?

A. He was in protective custody at that time, I assume he was somewhere in the area.

Q. I want to know, did you see him there on the 18th?

A. On the 18th?

Q. Yes.

A. I don't recall if I did or not.

Q. Did you see him on the 19th?

A. He was in the Detective Bureau on the 19th.

Q. Was he in with Mr. Moschiano?

A. Not while I was interviewing Mr. Moschiano.

Q. Were you alone, other than the two other Sheriff's deputies, when you were interviewing him?

A. Yes, sir.

Q. At the time you were interviewing him you were taking notes, I assume?

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A. Yes.

Q. Were the Sheriff's detectives taking notes?

A. Yes. Detective Kovack was, and subsequently Detective Marks was on the typewriter.

Q. Where was Mr. Moschiano when Detective Marks was on the typewriter?

A. Sitting on the sofa.

Q. Was it in the same room?

A. Yes, sir.

Q. Was Mr. Marks sitting and typing silently? By that I mean was Mr. Moschiano answering questions of Mr. Marks'?

A. Detective Kovack was trying to bring out a statement for Detective Marks to type from Mr. Moschiano, and Mr. Marks was also asking him about specific points so he could get the statement accurate on the typewriter.

Q. What you are saying, if I understand, Marks was asking questions and he would receive an answer from Mr. Moschiano?

A. Yes.

Q. And the question was put down, typed down on a sheet of paper, as well as the answer?

A. No, it was a narrative type statement.

Q. Well, that is what I am asking you. In other words, Detective Marks would ask the question of Mr. Moschiano?

A. Generally Detective Kovack would ask the question.

Q. Would ask the question of Mr. Moschiano?

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A. Yes, sir.

Q. Mr. Moschiano would answer?

A. Yes.

Q. Right?

A. Yes.

Q. Then you say that Detective Marks would type down a narrative of that question and answer?

A. Yes.

Q. Is that what you are saying?

A. Yes, sir.

Q. So that, if I understand you correctly, Detective Marks was not typing down each question that was asked and each answer that was given?

A. No, sir.

Q. He was putting it into his words, Mr. Marks' words, in a narrative form?

A. Yes, sir.

Q. Were you present during this entire procedure?

A. I was present during the time the statement was being typed, and upon the termination of -- the completion of the typed statement, I left the Sheriff's Office.

Q. After it was typed, what happened to it, did you see what happened to it?

A. I don't know.

Q. You don't know?

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A. No.

Q. You left after it was typed?

A. Yes, sir.

Q. Did you receive a copy after it was typed?

A. No, sir.

Q. All right. How long did this question and answer period take would you say?

A. Both of the occasions?

Q. I am talking about the 19th now, pertaining to the statement.

A. I was in Chief Mahoney's office probably an hour and a half.

Q. It took an hour and a half, as far as the questions and answers were concerned?

A. Yes, sir.

Q. Was anything said to Mr. Moschiano about an attorney prior to the question and answering period?

A. Detective Kovack, as I recall, advised Mr. Moschiano of his constitutional rights verbally, and if I am not mistaken, the constitutional rights are printed on the Sheriff's Office form that was used to type the statement.

THE COURT: Can you answer the question? Did he say anything to him about being represented by an attorney? The jury is sitting here, they don't know what constitutional rights are.

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THE WITNESS: Yes, sir.

BY MR. HIRSCH:

Q What did the Sheriff's detectives say to Mr. Moschiano pertaining to his constitutional rights?

A He advised that he had the opportunity to procure the services of an attorney, and if he could not afford one, one would be given him, appointed for him.

Q That is the total of his constitutional rights that you recall?

A Concerning the attorney.

Q What else do you recall, as far as his constitutional rights are concerned?

A I recall Detective Kovack told him he had a right to remain silent, anything he said could be used against him in a court of law, he could stop answering questions at any time.

Q Anything else?

A I don't recall anything else, no, sir.

Q Was the detective reading from anything at the time that he was making these statements?

A No.

Q At any time did you see the alleged statement in the hands of Mr. Moschiano? This is the typed statement I am talking about?

A No, sir.

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- Q You did not?
- A I don't recall seeing it in his hands.
- Q When the statement was commenced, did you see Detective Marks put a sheet of paper in the typewriter?
- A Yes, sir.
- Q Before he put the sheet of paper in the typewriter, did he show it to Mr. Moschiano?
- A I don't recall that he did that, no, sir.
- Q You don't recall that?
- A No, sir.
- Q You never saw the statement at any rate, did you?
- A Not to handle it and read it.
- Q You left after the typing was completed?
- A Yes, sir.
- Q Did Detective Marks or any other detective in your presence say to Mr. Moschiano, 'You know about the El Marrocco fire, don't you'?
- A I don't recall that question.
- Q Do you recall that anyone in that capacity stated that there was going to be twenty-five per cent paid for the burning of the El Marrocco?
- A Twenty-five per cent may have been mentioned. We knew about the twenty-five per cent.
- Q You told the defendant what you knew, and what you knew you had gained from Mr. Angelo Monachino?

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- A. No, sir, I did not.
- Q. You didn't tell him anything you gained from Mr. Monachino?
- A. I may have used it as to form, yes, sir.
- Q. Sure. You certainly referred to what you had heard during the five hour debriefing?
- A. Yes, sir.
- Q. So did Mr. Marks and the other detective, Kovack, I think you said, right?
- A. Yes, sir.
- Q. Do you know if you had the same information about the El Marrocco situation, and by "you," I mean your department, that the Sheriff's Department had or did you have more or less?
- A. We had attended the same debriefing.
- Q. Whatever you knew about it you gained from Angelo Monachino during the debriefing, as you say?
- A. Yes, sir.
- Q. Do you know whether or not -- I'm sorry.
- A. I assume they had the same information, we were sitting in the same room.
- Q. Did you ever talk to Angelo Monachino at another time, other than the debriefing, when the Sheriff's deputies were not present, pertaining to this situation?
- A. I don't recall doing that, no, sir.
- Q. Do you know the reverse of it, do you know whether or not

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the Sheriff's deputies ever did when you were not present?

A. I don't know.

Q. You stated that during the period of time that you were there you did not hear anyone say to Mr. Moschiano that he could not go home until he gave a statement of some sort?

A. No, sir.

Q. Obviously you don't know what took place when you were not there?

A. I don't know.

Q. I think that Mr. Parry asked you the question whether or not anyone spoke harshly, I think that is the word he used, to Mr. Moschiano while he was going through this interrogation, do you recall that question?

A. Yes, sir.

Q. And you said no one spoke harshly, right?

A. That is correct.

Q. By that what do you mean, "no one spoke harshly"?

A. I interpret harshly to mean getting tough with the individual.

Q. You are an interrogator?

A. Yes.

Q. You have interrogated people?

A. I'm an investigator.

Q. Being an investigator -- as part of being an investigator,

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you are also an interrogator, are you not?

A. Yes, sir.

Q. You have received training in the FBI, certain training pertaining to methods of interrogation, have you not?

A. Yes, sir.

Q. What methods have you learned, as far as interrogation is concerned?

MR. PARRY: Objection.

THE COURT: Well, I will allow a little bit of inquiry. Obviously, we don't want too much of it.

THE WITNESS: To be precise, search out the facts, be professional, approach an interview in an educated, intelligent manner.

BY MR. HIRSCH:

Q. Have you ever known an interrogation situation where the individual being interrogated was yelled at?

MR. PARRY: Objection, unless he wants to ask about this interrogation.

THE COURT: No, I think it is relevant to have the witness have some knowledge of what might be a harsh interrogation. Overruled.

BY MR. HIRSCH:

Q. Can you answer that?

A. Are you asking me have I ever yelled at anyone?

THE COURT: No, no. The question was were you ever present

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when someone was yelled at in an interrogation?

THE WITNESS: I don't recall ever being in an interview
where we were reduced to yelling.

BY MR. HIRSCH:

Q In other words, the only interviews you have been in,
interrogations -- do you use those words interchangeably,
interview and interrogation?

A I prefer the word "interview."

Q All right. As far as the interview is concerned, in other
words, you would talk in the same tone of voice that you
are using at this time?

A Essentially, yes, sir.

MR. HIRSCH: That is all I have. Thank you, sir.

THE WITNESS: You are welcome.

THE COURT: Any redirect?

MR. PARRY: Yes, your Honor.

REDIRECT EXAMINATION BY MR. PARRY:

Q Mr. Olson, you were asked about whether or not prior to
interviewing Mr. Moschiano that you were aware of a
\$27,000. amount that was paid by Mr. Marrocco to Mr.
Rallo, and you said in that regard that you would have
to refresh your recollection, is that correct?

A Yes.

Q You were not sure whether or not you had the figure?

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- A. I don't recall having the specific figures, no, sir.
- Q. Well, you don't recall or you will have to have your recollection refreshed?
- A. I don't recall, I would have to have it refreshed.
- Q. What document or documents would refresh your recollection in that regard?
- A. The only document I can assume would refresh it would be the result of interview with Angelo Monachino.
- Q. That would be on June 10, 1975?
- A. Yes, sir.
- Q. Showing you now this document, which has not been marked, can you identify that document for us, please?
- A. That is the result of my interview of Angelo Monachino taken in the Monroe County Sheriff's Office on June 10, 1975.
- Q. Would you examine that document, please, and see if it refreshes your recollection concerning this \$27,000. figure?
- A. (Witness examines document.)
- MR. HIRSCH: The \$27,000. figure is not in this interview.
- BY MR. PARRY:
- Q. Now, having examined this report of interview, can you tell us, please, whether or not Mr. Monachino advised you on that occasion that Patrick Marrocco paid \$27,000. to Vincent Rallo for the arson at 884 Emerson Street?

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A. I don't recall that, no, sir.

Q. Would there be any other times when you might have been advised of this -- strike that. Were there any other times when you were advised prior to interviewing Mr. Moschiano on June 19, 1975?

A. No, sir.

Q. You were not advised of the \$27,000. figure, is that correct?

A. That is correct.

Q. When you questioned Mr. Moschiano on June 19, 1975, did you tell him that Patrick Marrocco had paid \$27,000. to Vincent Rallo?

A. No, sir.

Q. He told you, is that correct?

A. Yes, sir.

Q. Did anyone else in your presence tell Mr. Moschiano that Patrick Marrocco had given \$27,000. to Vincent Rallo in payment for the arson?

A. No, sir.

MR. PARRY: No further questions.

RE CROSS-EXAMINATION BY MR. HIRSCH:

Q. Mr. Olson, you said this debriefing took some five hours?

A. Approximately five days.

Q. Five days?

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A. Yes, sir.

Q. All right. The statement that you have been using to refresh your recollection is dated June 10, 1975?

A. Yes, sir.

Q. That is the statement you just referred to, is it not?

A. Yes, sir.

Q. Now, do you have any other statement of Angelo Monachino, or however it is pronounced, pertaining to this debriefing of some five days?

A. Not concerning this particular arson, no, sir.

Q. Do you have anything concerning Vincent Rallo?

A. I'm not sure.

Q. Do you have anything concerning the alleged meeting, or whatever you want to call it or describe it as, in Vincent Trinker's office --

A. No, sir.

Q. -- pertaining to Mr. Rallo?

A. No, sir.

Q. Do you have anything pertaining to Mr. Marrocco, as far as this fire is concerned?

A. From Mr. Monachino?

Q. Yes.

A. No, sir.

Q. Or from any other source?

A. I have interviewed Mr. Marrocco.

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Q You have?

A Yes.

Q Do you have a report on that?

A I have the result of interview, yes, sir.

Q Who else had you interviewed pertaining to the El Marrocco situation?

A I have interviewed a number of individuals concerning that arson.

Q Who are the -- who have you interviewed?

THE COURT: The only pertinency is whom had he interviewed prior to June 19.

BY MR. HIRSCH:

Q Prior to the 19th?

A Prior to the 19th I interviewed one individual. I had interviewed Mr. Monachino and one individual.

Q Who was the other individual?

A Mr. Maranti. I think is the proper pronunciation.

Q Who is Maranti?

A He had been employed at one time to do some landscaping at the El Marrocco Nightclub.

Q When you talked to Mr. Marrocco, did he discuss any money?

A Mr. Marrocco?

Q Yes.

MR. PARRY: Objection.

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BY MR. HIRSCH:

Q That was not prior, I'm sorry, I apologize. Did you say you talked to Mr. Marrocco prior to --

A No, sir.

Q -- 19th of June?

A No.

Q You just talked to these two individuals, Mr. Maranti and Angelo Monachino?

A Yes, sir.

Q Do you know whether or not you obtained at the Sheriff's Office, either on the 18th or 19th of June, 1975, any information pertaining to monies that were paid back and forth or monies that went back and forth?

A No, sir.

Q You don't recall?

A I don't recall.

MR. HIRSCH: That is all.

THE COURT: All right. Thank you, Mr. Olson.

(Witness excused.)

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Excerpts of Trial Transcript.
Gregory A. Baldwin for Government, Direct.

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MR. PARRY: The Government calls Gregory Baldwin.

G R E G O R Y A . B A L D W I N , 308 Chelmsford
Road, Rochester, New York, called as a witness on behalf of
the Government, and being first duly sworn, testified as fol-
lows:

DIRECT EXAMINATION BY MR. PARRY:

Q Mr. Baldwin, what is your occupation, please?

A I am an attorney with the United States Department of
Justice.

Q How long have you been an attorney with the United States
Department of Justice?

A I have been employed by the Department of Justice since
August of 1974. I was admitted to the New York State
Bar in March of 1975.

THE COURT: Knowing the propensities of attorneys as
witnesses, I ask that you listen to the
questions and just be responsive to the
questions.

THE WITNESS: Yes, sir.

BY MR. PARRY:

Q The Judge means don't run off at the mouth. Mr. Baldwin,
directing your attention now to early September, 1975,

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did you have occasion to be contacted by Mr. Robert Hirsch?

A. Yes, sir, I did.

Q. And at that time can you tell us, please, in what capacity did Mr. Hirsch contact you?

A. Mr. Hirsch contacted me in the capacity of the attorney representing Mr. Samuel Moschiano.

Q. And what, if any, request did Mr. Hirsch make of you at that time?

A. I believe at that time that --

THE COURT: You used the verb "believe."

THE WITNESS: Mr. Moschiano was at that time under subpoena to appear before the United States Grand Jury. Mr. Hirsch advised me that his client wanted to receive immunity from the United States before he would testify before the grand jury.

BY MR. PARRY:

Q. And could you explain briefly what you mean by the term "immunity"?

A. Immunity means that the testimony given by an individual who has been immunized won't be used against him.

THE COURT: What does this have to do with the lawsuit?

MR. PARRY: Well, I wanted to elicit the two main features of the immunity order which would explain why it was that Mr. Moschiano ultimately wound up

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in jail.

MR. HIRSCH: I can't hear you.

MR. PARRY: Can we do this at sidebar?

THE COURT: Let me ask the jury to step out just for a moment.

(Thereupon, the jury exited the courtroom at 1:50 P.M.)

MR. PARRY: The purpose, your Honor, is to establish the burden under which Mr. Moschiano was operating, that is, by receiving immunity, number one, his testimony could not be used against him; number two, however, he was under an obligation to testify. Now, on September 25 he refused to testify and he was incarcerated as a result of that, and it was --

THE COURT: Is there a chronology, was he subsequently accorded immunity and brought back before the grand jury?

MR. PARRY: Right. He was accorded immunity on September 25, he refused to testify on that day and he was then lodged in the Monroe County Jail. Chief Mahoney testified to meeting with him that night. Now, from September 25 to October

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THE COURT: This was --

MR. PARRY: This was at the time the immunity was granted to him.

THE COURT: He was lodged in jail prior to immunity?

MR. PARRY: No, he was lodged in jail the day he received immunity.

THE COURT: He received immunity and he went back to the grand jury and refused to testify?

MR. PARRY: That is right. Then for two weeks he remained in jail, and he was going to remain in jail until he agreed to testify. At that point --

THE COURT: Until the term of the grand jury had run out?

MR. PARRY: Correct. At that point he then testified, albeit we maintain falsely. It was by testifying that he purged himself of the contempt, and he was able to gain his release. We would maintain this goes to his motive, he's got a dilemma, if he refuses to testify he is going to stay in jail, and if he testifies he is going to be testifying against the men he is afraid of, as he related to Chief Mahoney and Special Agent Carney. His way out was to testify falsely, purging himself of the con-

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tempt and yet not alienating the men he was afraid of. I think it is material and it is pertinent to the Government's case.

THE COURT: Well, it seems to me we are getting on a side-track. I am not trying to argue with the Government's theory or disturb it. If you want to pursue that, I will let you.

MR. PARRY: Thank you, your Honor.

MR. HIRSCH: I respectfully except to your Honor's ruling, as far as allowing the Government to pursue that aspect of the testimony. Again, it is not within the indictment as to whether or not he, in fact, was telling the truth on that day, whether in fact he did give a false declaration on the 9th of October, 1975.

THE COURT: All right. In other words, you do object to and except from my ruling?

MR. HIRSCH: Yes, your Honor. I do from the standpoint that we are not here to meet that burden. We are here to meet the burden as outlined in the indictment.

THE COURT: All right. Inasmuch as there is an objection, I will change my decision on it, I will not allow you to go into that.

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(Thereupon, the jury entered the courtroom
at 1:55 P.M.)

BY MR. PARRY:

Q After you received this request from Mr. Hirsch that
Mr. Moschiano received immunity what, if anything, did
you do?

A We then proceeded to make application to the Attorney
General of the United States for authorization to secure
a grant of immunity for Mr. Moschiano.

Q And did you receive such authorization?

A Yes.

THE COURT: Wait a minute, I thought we were not going into
this, we were going to leapfrog this, pursuant
to my ruling.

MR. PARRY: I'm sorry, your Honor. I thought we were not
going into the explanation of immunity. I
didn't realize we couldn't --

THE COURT: All right. I think we ought to not get into
it at all, leave it where it is. Go ahead.

BY MR. PARRY:

Q Directing your attention now to September 25, 1975, did
you have occasion on that day to meet with one Samuel
Moschiano?

A Yes, I did.

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Q And the Samuel Moschiano that you met with on that day, could you point him out for us, please?

A Yes, sir, he is seated across the courtroom, wearing a checkered black and white jacket and a white turtle neck.

MR. PARRY: For the record, the witness has identified the defendant, Samuel Moschiano.

THE COURT: What date was this?

MR. PARRY: September 25, 1975.

THE COURT: Thank you.

BY MR. PARRY:

Q Where did you meet with Mr. Moschiano on that day?

A In my office here in the Federal Building, Room 318.

Q Was Mr. Moschiano with anyone?

A Yes, sir, he was. He was accompanied by Mr. Hirsch.

Q Was anyone else present when you met with Mr. Moschiano?

A Not that I recall, sir, aside from myself and Mr. Hirsch.

Q Will you tell us, please, what transpired at that time?

A Yes, sir. As I stated I had already received the authorization to secure a grant of immunity --

THE COURT: We are not going into the immunity, Mr. Baldwin.

THE WITNESS: I am sorry.

BY MR. PARRY:

Q Did you take Mr. Moschiano -- your Honor, may I be heard on this point again? I hate to have the jury marching

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in and out, but this is a matter of some concern.

THE COURT: Well, all right. I apologize, ladies and gentlemen.

(Thereupon, the jury exited the courtroom at 1:58 P.M.)

THE COURT: The only thing that disturbs me, Mr. Hirsch, the only reason I tentatively reversed myself is some concern that you on behalf of -- you and/or Mr. Moschiano, you on his behalf, might somehow be asserting a lack of immunity as being some substitute or misconceived substitute for a Fifth Amendment refusal to testify.

MR. HIRSCH: I can state that categorically on the record that we will not assert that, and we are not asserting it.

THE COURT: What further point is there?

MR. PARRY: The further point, of course, would be that a juror is going to say, 'Gee, maybe he didn't want to go in there and incriminate himself.'

MR. HIRSCH: The issue is whether or not he made a false declaration on the 9th of October.

MR. PARRY: The issue is did he have a motive to make a false declaration. If he had a motive, it is

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always more likely that he did make a false declaration. We are maintaining that he had a motive. We are maintaining that he had a motive, number, one, to get out of jail and, number two, not to offend these people he was afraid of. I think it goes clearly to the question of motive, and we should be entitled to get into it.

THE COURT:

Well, it goes to sharpening of a motive and taking away some obfuscation of the motive evidence that might otherwise exist, even if it is not asserted by you in argument, Mr. Hirsch, that jurors having watched television and read this, that and the other thing, might have some idea of the Fifth Amendment, and people not being able to be made to testify against themselves, and they would miss the nuance that properly such a person would so state and refuse to answer, and they might think that this would be an entitlement for them to be devious, lying, and avoiding the point, rather than coming out -- giving a false story rather than --

MR. HIRSCH:

I don't know how they could draw that because he did testify, he didn't take the Fifth. He

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made certain statements in there that the Government maintains were untrue, and they are basing their case on the statement that he made on the 19th of June, 1975, and they are saying both cannot be true. They are saying when he went in on the 9th of October, 1975 that those statements were false declarations based upon a comparison with the 19th.

THE COURT: Can't this be surmounted by a simple agreement that when he went back on October 9 there was in effect an order of immunity, and simply placing that in the record?

MR. PARRY: I would like to place it before the jury.

MR. HIRSCH: I have never denied and I don't at this time deny there was an order of immunity obviously at that time.

THE COURT: If it is in evidence that the order of immunity was in effect as of the time he went in on October 9, then there is no question about his compulsion to testify and the unavailability of the Fifth Amendment.

MR. HIRSCH: That is true, but getting into the aspect of what took place prior to that time, the fact he had been incarcerated for two weeks --

THE COURT: That is what I hoped to cut through.

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- MR. HIRSCH: It isn't probative as an option to him. The man did testify. As I understand the crux of the case, and the case as I see the posture at this time, is that it is actually the difference between the statement of the 19th of June and the statement of the 9th of October, 1975.
- THE COURT: Which is true?
- MR. HIRSCH: Which was true, right, whether or not he did in fact make a false declaration. We will concede that he had immunity at that time.
- MR. PARRY: The question, however, is what was his motivation, and he had been incarcerated since September 25 for his refusal to testify under this order of immunity, and on October 9 he did testify. We maintain that goes directly to the question of motive, he had to get out of jail.
- MR. HIRSCH: That is not so, he didn't have to get out of jail.
- MR. PARRY: I think once that was admitted in evidence we would be entitled to argue that it was human nature that he wanted to get out of jail. If he doesn't mind jail, let him plead guilty here.

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MR. HIRSCH: I think we are getting far afield.

MR. PARRY: I think it goes directly to the question of motive.

THE COURT: Let's hit it quickly. In fact, on a certain day an order of immunity was granted, right?

MR. HIRSCH: No question.

THE COURT: I don't know if you have the order, the order is probably in the file.

MR. PARRY: I have the order here, your Honor, but really what --

THE COURT: Then it can be recounted that he after the issuance of the order of immunity was brought before the grand jury, refused to testify, was incarcerated, and on a later date indicated a willingness to testify, namely, October 9, 1975, and came before the grand jury, and then you have it.

MR. PARRY: Fine. If we could go into that, that is all we require.

THE COURT: It would certainly very much streamline and not embellish, that's what I would like to do. Now, admittedly, Mr. Hirsch, it runs against you objection because it does place before the jury the aspect of the interim incarceration which involves itself with

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motivation. In other words, rather than sit there and just plainly refuse because, if the Government is right, he is afraid for his son or himself or family, he also then brings in the further motivation of wanting to be out of jail, which is why he comes in and says something. This is the Government's theory, obviously I am not buying one theory or the other, but this is, as I see it, the Government's theory. Now, I think I can reasonably expect you to meet that.

MR. HIRSCH: If that is your Honor's ruling, obviously I will by necessity meet it. I would except to your Honor's ruling.

THE COURT: Let's get over it quickly instead of spelling things out from A to Z. Bring back the jury.

(Thereupon, the jury returned to the courtroom at 2:05 P.M.)

THE COURT: You have Government's Exhibit 5, I assume if you show it to Mr. Hirsch, he will stipulate that that was the order that was in effect. Why don't you show it to him.

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BY MR. PARRY:

Q Mr. Baldwin, directing your attention again to September 25, 1975, on that day did you obtain an order of immunity from Judge Burke for Mr. Moschiano?

A Yes, sir, I did.

THE COURT: All right, Government's Exhibit 5 is it. It is agreed that it can be in evidence?

MR. HIRSCH: Yes, your Honor.

THE COURT: Government's Exhibit 5 is in evidence.

(Thereupon, Government's Exhibit 5, pre-marked for identification, was received and marked in evidence.)

BY MR. PARRY:

Q Pursuant to that order of immunity did Mr. Moschiano, in fact, testify before the grand jury on that day?

A He appeared before the grand jury, sir, but he did not testify.

Q He refused to testify, is that correct?

A Yes, sir.

Q Subsequent to that time he was remanded to custody for his refusal to testify?

A Yes, that is correct.

Q Directing your attention to October 8, 1975, did you have

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occasion on that day to have a communication with Mr. Hirsch?

A. Yes, sir, I did.

Q. Would you tell us, please, what Mr. Hirsch said to you on that occasion?

A. Mr. Hirsch stated that his client was prepared to testify before the grand jury at that time.

Q. And thereafter did you make arrangements to have Mr. Moschiano brought over from the Monroe County Jail?

A. Yes, I did, I arranged with the United States Marshal --

THE COURT: It is a simple question.

THE WITNESS: Yes, sir.

BY MR. PARRY:

Q. And did he, in fact, come to your office on October 9, 1975?

A. Yes, sir, he did.

Q. Would you tell us, please, on that day, October 9, 1975, who was present in your office when Mr. Moschiano was there?

A. Besides myself and Mr. Moschiano there was Deputy Marshal Seckie and Deputy Marshal Ship.

Q. Would you tell us, please, what was said on that occasion?

A. I first stated to Mr. Moschiano that I would like to go over his testimony with him before he went down to the grand jury. He stated to me that anything he had to say

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he wanted to say in the grand jury, and only in the grand jury. I then stated to him that I felt that the reason he had refused to testify --

THE COURT: All right, we don't care about that. There came a point when he went in the grand jury, I assume.

MR. PARRY: Your Honor, consistent with your previous ruling, may I make inquiry of this witness concerning his representations to Mr. Moschiano about the program as previously mentioned?

THE COURT: All right. Very quickly, just by label.

BY MR. PARRY:

Q When you spoke with Mr. Moschiano, I believe you were testifying that you told him that you had some -- that you believed there was a reason he was not testifying, is that correct?

A Yes, sir.

Q And could you tell us, please, what it was that you said to Mr. Moschiano about that reason?

MR. HIRSCH: I object to that.

THE WITNESS: I told him --

THE COURT: Wait a minute.

MR. HIRSCH: I object to that. I think the Court already stated the substance of the question to be asked.

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MR. PARRY: Well, the Court has stated that we can't describe the program but --

THE COURT: All right, Mr. Baldwin, is it simply this, that you, wrongly or rightly, concluded that the reason that he had not testified before was his own fear for himself and his family, and you mentioned again and told him of the Federal Protection Program?

THE WITNESS: Yes, your Honor, that is correct.

BY MR. PARRY:

Q Now, thereafter did Mr. Moschiano make any response to you when you told him about the Federal Witness Protection Program?

A He stated that he understood.

Q After that did you take Mr. Moschiano before the grand jury?

A Yes, sir, I did.

Q This was the May, 1975 Grand Jury?

A Yes, sir, it was.

Q Now, when Mr. Moschiano came into the grand jury room what, if anything, occurred?

A The first thing that happened was that he was administered the oath by the foreman of the grand jury.

MR. HIRSCH: Objection, that is a conclusion.

MR. PARRY: Well --

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THE COURT: Yes. What did you hear said?

THE WITNESS: The foreman asked him if the testimony he was going to give before the United States Grand Jury was the truth, the whole truth and nothing but the truth, so help him God. Mr. Moschiano stated -- I believe the response was, "I do."

BY MR. PARRY:

Q After Mr. Moschiano was sworn as a witness on that day did you proceed to interrogate him?

A Yes, sir, I did.

Q Now, in regard to your questioning of Mr. Moschiano, can you tell us, please, what was the grand jury investigating at that time?

A The grand jury was investigating a series of fires, which were recently believed to have been arsons. It was conducting an investigation pursuant to Section 1341 of Title 18, United States Code, relating to mail fraud, and to Section 1962 of Title 18, United States Code, relating to the use of an organization or business for certain unlawful purposes.

Q And in regard to that investigation, you say they were investigating a series of arsons in the Rochester area?

THE COURT: Alleged arsons.

BY MR. PARRY:

Q Alleged arsons?

A Yes, sir.

Q Was one of these arsons the arson which occurred or allegedly occurred at the El Marrocco?

A Yes, sir, that is correct.

Q And it was in connection with that inquiry that Mr. Moschiano appeared?

A Yes, sir.

Q Now, showing you what has been marked as Court Exhibit A, the indictment in this case, and directing your attention to Count 1, Paragraph 4, the questions and answers set forth therein, were you the person who asked those questions of Mr. Moschiano?

A Yes, I am.

Q And are those the answers given by Mr. Moschiano?

A Yes.

Q To the best of your knowledge and belief, that is an accurate transcription of those particular questions and answers?

A Yes, sir, it is.

THE COURT: Well, the best evidence of the accuracy we already have, namely, the reporter.

BY MR. PARRY:

Q In regard to the testimony set forth in Count 1 of Court Exhibit A, can you tell us, please, what was the material-

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ity of that testimony to the grand jury's inquiry into these arsons?

A. Yes, sir. At the time Mr. Moschiano appeared, we already knew on the basis of his statement to the FBI and the Sheriff's Office, and also on the basis of Mr. Monachino's debriefing --

MR. HIRSCH: Objection, that is not responsive.

THE COURT: Yes. Actually I can be simply reached. There are two counts in the indictment, Mr. Baldwin, the first one deals with questions and answers basically concerning one factual matter, the second concerning another factual matter. Now, as I read the first count, it deals with a fact concerning payment of some \$27,000. from Mr. Marrocco to Mr. Rallo?

THE WITNESS: Yes, sir.

THE COURT: And the second involves some fact concerning some conversation between Mr. Marrocco and Mr. Moschiano early in January, 1970, concerning an imminent arson?

THE WITNESS: Yes, sir.

THE COURT: Those two subject matters. Now, I assume the next question is of what materiality to what the grand jury was investigating were those two subject matters?

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THE WITNESS: It was material to the grand jury's investigation, your Honor, to determine that this being an arson, who had set the fire and for what purpose, and what the financial arrangements had been in setting that fire. In other words, who had paid? It was partially for that reason that Mr. Moschiano was called before the grand jury to inquire into those matters. By stating, first of all, that he did not say to Special Agent Olson that Mr. Marrocco paid Mr. Rallo the sum of \$27,000. and, secondly, by saying that he did not know anything about any money being paid by Mr. Marrocco to Mr. Rallo, he, in effect, set up a --

THE COURT: Well, we don't care about that. You are saying that this was material to the investigation?

THE WITNESS: Yes, sir, it was.

THE COURT: All right.

THE WITNESS: Do you want me to elaborate, your Honor.

THE COURT: No.

BY MR. PARRY:

Q In regard to Count 2 of the indictment and the testimony set forth therein, was that testimony also material --

A. Yes.

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Q -- to the grand jury's investigation?

A Yes, sir, it was.

MR. PARRY: Would the Court care for elaboration?

THE COURT: No.

BY MR. PARRY:

Q Mr. Baldwin, after Mr. Moschiano testified before the grand jury that day was he released from custody?

A Yes, sir, he was.

Q That was as a result of his testimony, is that correct?

A Yes, sir.

MR. PARRY: You may inquiry.

CROSS-EXAMINATION BY MR. HIRSCH:

Q Mr. Baldwin, did Mr. Moschiano tell you on the 8th of October, 1975, when he was in your office, that he had discussed his testimony with me?

A Not on the 8th of October, sir --

Q I'm just asking you on the 8th of October.

A No, sir.

Q You said that he told you anything that he had to say he would say to the grand jury?

A Not on that date.

Q On the 8th he did not say that to you?

A No, sir. He came in the day that he testified, I believe, that is the 9th.

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Q I'm wrong, it is the 9th. Well, if I change the date from the 8th to the 9th, would you answer it in that fashion?

THE COURT: Was your first question answered the same way?

MR. HIRSCH: I will ask it again, your Honor.

BY MR. HIRSCH:

Q On the 9th of October, 1975, did Mr. Moschiano tell you that he would testify before the grand jury, that anything he had to say he would say to the grand jury?

A Yes, sir.

Q He did not wish to discuss his testimony with you?

A That is correct.

Q That would be his right, would it not?

A Yes, sir.

Q He was not compelled to discuss his testimony with you prior to going into the grand jury, was he?

A Not at all, no, sir.

Q And you so informed him?

A I don't recall if I informed him of that or not, sir.

Q Did you say in words or substance to him, 'You are going to tell the truth,' on the 9th day of October, 1975, this is in your office before going in?

A I'm not sure I understand. Did I tell Mr. Moschiano that he was going to tell the truth?

Q Yes.

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- A. No, sir, not that I recall. I may have said, 'I want you to tell the truth,' but I don't recall making a statement the way you phrased it.
- Q. Did you say in words or substance, 'You are going to tell the truth or I will see to it that you get five years, and you will not do that here, you will do it in Leavenworth'?
- A. Again, I don't recall that that was the substance, but I am sure that I would have pointed out the penalties of perjury.
- Q. Did you mention Leavenworth, not doing the time here?
- A. I may well have, I'm not sure.
- Q. Did you say anything as far as the Judge would see to it that he got five years in Leavenworth?
- A. No, sir.
- Q. You mentioned no Federal Court Judge's name?
- A. Not that I recall, no, sir.
- Q. Did you make any notes of that conversation that you had with him?
- A. No, sir, I did not.
- Q. Was it taped in any fashion?
- A. No, sir, it wasn't.
- Q. Do you have tape equipment in your office?
- A. No, sir, I don't --
- Q. You have answered it.

A. All right.

Q After he went into the grand jury, did you tell him in words or substance that if he didn't tell the truth that he could be charged with perjury, giving a false declaration, and that that charge would subject him to five years in Leavenworth -- I shouldn't say Leavenworth -- five years?

A. I don't recall if I went into the penalty itself, but as a normal course --

Q Five years and/or a substantial fine?

A. Yes, sir, I believe I would have said that in the normal course of giving any witness the normal warnings in the grand jury.

Q Let's get this straight so we have no misunderstanding. Did you say the possible penalty for perjury is up to five years imprisonment or a substantial fine, do you recall making that statement to him?

A. I believe I do, yes, sir.

MR. PARRY: May the witness see the transcript?

THE COURT: Not unless he needs to. He has shown no indication of needing to.

BY MR. HIRSCH:

Q Thereafter Mr. Moschiano did go into the grand jury?

A. Yes, sir.

Q All right. And thereafter various questions were asked

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and he gave various answers, is that correct?

A. Yes.

Q. You have the indictment before you, I take it?

A. Yes, sir, I have.

Q. And you have stated earlier that those were the questions asked and the answers that he gave?

A. Yes, sir.

Q. Correct?

A. Yes, sir.

Q. At the time that you were asking the questions in the exhibit that you have before you, which is the indictment, did you also have the statement that it is alleged Mr. Moschiano gave on the 19th of June, 1975 in the Monroe County Sheriff's Office?

A. I'm not sure if I had or not, I think I did.

THE COURT: Think what?

THE WITNESS: I believe that I did have that statement.

BY MR. HIRSCH:

Q. I'm asking you, did you have it there? You can answer it yes or no or I don't know, however you wish.

A. I believe if I did --

Q. I don't want you to believe, I want you to tell me yes or no if you had it, if you can.

A. I can't be sure.

Q. Fine. Did you have any other -- strike that. Did you

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have any statements from Mr. Moschiano from which you asked questions?

A. I'm just not sure what I had with me at the time he appeared before the grand jury.

Q. Is your answer that you recall that you did have something but you can't specify as to what you had?

A. If you want -- to the best of my recollection, I believe I had the FBI 302.

Q. What is an FBI 302, that is like saying a 508 to me.

A. It is a report of interview. When an FBI agent interviews someone, he writes out a report of that interview, and that's what I would have had.

Q. Do you recall anything else that you would have had with you?

A. Nothing specifically, no, sir.

Q. Were you aware of the alleged statement of June 19, 1975 on the 9th day of October, 1975?

A. Yes, I was.

Q. Did you know an Angelo Monachino at that time?

A. Yes, sir, I did.

Q. Had you discussed various matters pertaining to the El Marrocco with Angelo Monachino prior to the 9th day of October, 1975?

A. Yes, sir, I had.

Q. Did you discuss the aspect of the alleged fire -- I

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shouldn't say that -- the arson?

A. Yes, sir.

Q. Did you attend the debriefing session with the Sheriff's Department and the FBI?

A. I attended one debriefing session that I specifically recall. I don't know if I attended all of them.

Q. Would it be fair to say from time to time, from the first part of June, I believe, when Angelo Monachino was arrested, until the 9th day of October, 1975, you met with Mr. Angelo Monachino?

A. Yes, sir.

Q. You met with him in the Sheriff's Department of the County of Monroe, is that right?

A. Yes, sir.

Q. Do you know a man by the name of Lanovera?

A. Yes, I do.

Q. Did you also meet with Mr. Lanovera and Mr. Monachino in the Sheriff's Office in this period of time?

A. Both of them together, at the same time?

Q. Yes.

MR. PARRY: I object to the relevancy, I don't see what Lanovera has to do with this.

THE COURT: I don't know. I will allow an inquiry. I trust --

MR. HIRSCH: I will clear it up.

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BY MR. HIRSCH:

Q Did you discuss the arson, the alleged arson with Mr. Lanovera and Mr. Monachino together pertaining to the El Marrocco?

A No, sir, I don't believe I discussed the arson with the two of them together.

Q Did you discuss it separately with -- you said already with Mr. Monachino, right?

A Yes, sir.

Q Did you also discuss it with Mr. Lanovera?

A Not that I recall, no, sir.

Q Did you discuss any arsons with Mr. Lanovera?

A Yes, sir, I did.

Q You are saying you did not discuss this particular arson?

A No, sir, Mr. Lanovera knew about --

Q No, this particular arson.

A That is correct.

Q It is fair to say that Mr. Monachino is the only one you discussed this arson with?

A Yes, sir.

Q And when you talked to Mr. Monachino you had some prior information pertaining to the El Marrocco fire, did you not?

A No, sir.

Q You did not?

Excerpts of Trial Transcript.
Gregory A. Baldwin for Government, Cross.

- A. No, sir, I did not.
- Q. Were you privy to the FBI reports?
- A. Yes, sir.
- Q. Did you grant immunity to Mr. Monachino?
- A. Well, I wouldn't have granted it, I might have made an application requesting it.
- Q. Did you promise that you would do what you could to get immunity for him?
- A. I don't recall what promises were made. I believe he was immunized, I think I made application for that immunity.
- Q. It is fair to say that you did discuss immunity with Mr. Monachino?
- A. Yes, sir, I think that is fair to say.
- Q. You discussed it in the presence of Chief Mahoney, did you not?
- A. The immunity?
- Q. Yes, sir.
- A. I don't recall specifically if I did or not.
- Q. Did you discuss it in the presence of Raymond Cornelius?
- A. Again, I don't specifically recall. There is no reason why I wouldn't have, but I don't recall if I did or not.
- Q. Before you came in to testify did you refresh your recollection by reading any material pertaining to your

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testimony?

A. I have in the past -- not immediately prior to coming in --
I have in the past read the indictment and Mr. Moschiano's
testimony, yes, sir.

Q. You drew the indictment, didn't you?

A. Yes, sir.

Q. Did you read anything else outside of the indictment before coming in here?

A. Well, before I came in I read Mr. Moschiano's statement to the FBI agent and Mr. Moschiano's statement to the detectives in the Sheriff's Office.

Q. The 19th of June statement?

A. Yes, sir. I don't recall when was the last time that I looked those over.

Q. Okay. You obtained the information about the arson at the El Marrocco Club for Angelo Monachino, did you not?

A. Yes, sir.

Q. And part of the investigation of the May Federal Grand Jury of 1975 had to do with the El Marrocco investigation, is that correct?

A. Yes, sir.

Q. And as far as that aspect of the investigation, Mr. Monachino could have testified as to what he knew about the El Marrocco -- I will withdraw it, it is a poorly phrased question. At the time the May Grand Jury was

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meeting you had a witness by the name of Angelo Monachino who had information about the El Marrocco fire, is that correct?

A. Yes, sir.

Q. And was available to be called as a witness before this grand jury?

A. Yes, sir.

Q. And he had knowledge as far as what allegedly Mr. Marrocco's involvement was, is that correct, that is where you got your information?

A. We received the information from Mr. Monachino that this had been an arson. He had spoken with the people who started the fire and had seen some of the preparations.

Q. You had a witness that you could put before the grand jury who could testify as to the facts of the El Marrocco fire?

A. No, sir, he couldn't testify directly to the involvement of Mr. Moschiano or Mr. Marrocco or the payment of the fire because, as I recall, he didn't have direct knowledge of how that payment took place.

Q. He didn't have direct knowledge of the fire either, did he?

A. Well, he had been there and seen the preparations and, I believe, he had spoken with the people who set the fire.

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Q Did he set up the fire?

A No, I don't think he did set up that fire.

Q Are you aware that Angelo Monachino testified in this case?

A Yes, sir.

Q Are you aware that he said he went into the El Marrocco the day before the fire?

A I know he had seen the preparations, but I don't know exactly what he said in court here.

Q You know that he saw the preparations?

A As I recall from discussion with him, yes, sir.

Q He told you that long before this grand jury met, the May 1975 Federal Grand Jury, you knew it long before they met, did you not?

A That he had gone in and seen the preparations?

Q Yes.

A Yes, sir.

Q You knew that he had information about the El Marrocco fire?

A Yes, sir.

Q That was part of this debriefing, wasn't it?

A Yes, it was.

Q Did Mr. Moschiano tell you that the figure of \$27,000. and \$12,000. were given to him by a law enforcement agent?

A In the grand jury?

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Q Yes.

A Yes, I believe he did that. If I could see the transcript --

Q You've got it right before you.

A Yes, sir, he did say that.

Q Do you know a Vincent Rallo?

A Yes, sir.

Q Who is Vincent Rallo?

A In relation to this case, sir?

Q Yes.

A Vincent Rallo was the insurance agent.

Q Do you know a Leslie Bradshaw?

A Yes, sir.

Q Who is Leslie Bradshaw?

A He is an attorney in town.

Q Is he the attorney representing Mr. Vincent Rallo?

A Yes, sir, he is.

Q And did you make an offer in your capacity as a United States Attorney, as far as Vincent Rallo is concerned, for Vincent Rallo to testify against Samuel Moschiano?

A I don't know if I can say I made an offer. I did discuss the possibility of Mr. Rallo's cooperation with the Government with Mr. Bradshaw.

Q And as part of that discussion did you -- as part of that discussion did it include a plea to one count of an indictment, as far as Mr. Rallo was concerned?

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- A. Yes, I believe it did.
- Q. Did it include a sentence by -- or a plea that was to be taken before Judge Harold Burke, United States District Court Judge, here in Rochester?
- A. Yes, sir, that is who the case is before.
- Q. Did you also state that you would recommend a one year sentence in the Monroe County Jail?
- A. No, sir, I did not.
- Q. And did you also recommend --
- A. Excuse me --
- Q. Let me withdraw that so we are perfectly clear on this. Did you recommend a one year sentence in the Monroe County Jail to run concurrently with a year that he was presently serving or was going to serve?
- A. I believe that Mr. Bradshaw brought that up, and I think I said that I would not oppose his request of that nature.
- Q. And this took place in the early fall of this year, did it not, around September of 1976?
- A. I'm not sure, I think it was later than that. About that time.
- Q. September or October, 1976?
- A. I would say so, yes, sir.
- Q. Did you also state in words or substance that you would attempt to relocate Mr. Rallo?
- A. I believe I stated that if Mr. Rallo felt that he was

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in danger we would consider the possibility of relocation for him.

Q This was a conversation at the same time that you discussed the plea to the one count of the indictment and sentence by Judge Burke, and the discussion about the recommendation of a one year sentence in the Monroe County Jail to run concurrently with any state sentence?

A Yes, it was a running discussion with Mr. Bradshaw.

Q That was all part of the same thing, is that correct?

A Yes, sir.

Q Did you also state in words or substance that if Vincent Rallo went to trial that you would demand a maximum sentence of twenty years?

A No, sir, I don't believe I did that because normally we are not permitted to make any recommendation.

Q I'm not asking you what you normally have the right to do, I am asking you whether or not in words or in substance during the total conversation, that if there was not cooperation by Vincent Rallo and testimony against Mr. Moschiano that you would, if he went to trial on the indictment pending and, of course, was convicted, you would demand the maximum sentence of twenty years?

A I don't believe -- you characterize it almost as a threat, I did nothing of that nature, I don't recall making any statement about any sentence.

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Q I don't mean it as a threat, sir. Did you mention anything at all during the conversation about the maximum sentence of twenty years, as far as Vincent Rallo was concerned?

MR. PARRY: I think we are getting far afield as to what might or might not have happened.

MR. HIRSCH: This is cross-examination.

THE COURT: Yes, I think it is proper. Overruled.

THE WITNESS: Would you repeat the question?

THE COURT: Read it.

MR. HIRSCH: I will rephrase it, your Honor.

BY MR. HIRSCH:

Q At any time during this conversation that you had with the attorney for Vincent Rallo, at any time did the subject of the maximum of twenty years come up?

A I am sure it must have, in the sense that we were talking about the possibility of his plea to Count 1, and the maximum sentence to Count 1 would have been twenty years, and I am sure that one or the other of us would have pointed that out.

Q And you have already stated that if he agreed to testify and he pleaded to Count 1 of the indictment, then the recommendation would be a one year sentence in the Monroe County Jail?

A I said I wouldn't oppose that recommendation to the

Excerpts of Trial Transcript.
Gregory A. Baldwin for Government, Redirect.

Court.

Q As opposed to the twenty years?

A Yes, sir.

MR. HIRSCH: That is all.

REDIRECT EXAMINATION BY MR. PARRY:

Q In regard now to these conversations that you had with Mr. Bradshaw, against whom were you trying to get Mr. Rallo to testify?

A We were not aiming at anybody in particular, sir. I was looking for his honest, truthful testimony to all knowledge that he had.

THE COURT: The grand jury targeted at somebody or some thing, you had some purpose. Simply state it.

BY MR. PARRY:

Q Did you make a request that Mr. Rallo testify in any particular case?

A Yes, sir, in the case under which he was indicted as a defendant.

Q So that these negotiations that you were engaged in with Mr. Bradshaw were geared toward obtaining Mr. Rallo's cooperation in that case, is that correct?

A Yes, sir.

Q They were not designed primarily to gain the cooperation of Mr. Rallo in this case, is that correct?

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A. No, sir, not primarily, no.

Q. That would be a concomitant, if he were to cooperate, however, he would have to cooperate all the way with the Government, is that correct?

A. That is correct.

Q. Just to make everything clear, Mr. Moschiano was not the defendant in that other case that you wanted Mr. Rallo to testify in, is that correct?

A. That is correct.

Q. That case deals with the arson conspiracy, is that right?

A. Yes, sir.

MR. PARRY: No further questions.

RECROSS-EXAMINATION BY MR. HIRSCH:

Q. But you already stated, Mr. Baldwin, that the offer also pertained to testifying as far as Mr. Moschiano was concerned?

A. Yes, sir, it was a concomitant part.

MR. HIRSCH: That is all.

THE COURT: Thank you, Mr. Baldwin.

(Witness excused.)

* * * * *

Excerpts of Trial Transcript.
Charge of the Court.

THE COURT:

Ladies and gentlemen, at this point I am going to tell you the principles of law that will apply to this case, insofar as your deliberations and decisions are concerned. Now, one point I must mention initially, and it has been reiterated by the attorneys, that is, that it is your duty and yours alone to determine the facts in this case and, of course, that includes the ultimate fact of the guilt or innocence of Mr. Moschiano on each of these two counts that are set forth in the indictment. I may refer or I may not refer to any of my recollection of the facts. If I do, it will be merely by way of illustrating some principle of law, but if I do, I emphasize that you are not to take that as any evidence, you are not to take that as in any way determining those facts, and the determination of facts is completely yours, and you are not also to consider any such reference or anything I may have said during the trial as indicating any feeling that I have as to what your verdict should be relative to Mr. Moschiano, and even

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if you might so consider that I had some such a leaning or feeling, I tell you that you must ignore it completely. Rely upon your recollection of the evidence, and do not be influenced by any remark of mine or by either of the attorneys concerning any of the facts or any of the evidence.

I am tempted not to read to you the two counts of the indictment because, one, you will have the indictment before you in your jury room as Court Exhibit A, and also each is quite lengthy, but I, nevertheless, will read them to you. There are two counts, Count 1 says -- it is in numbered paragraphs which I won't bother mentioning -- Number 1:

"That on or about October 9, 1975, in the Western District of New York, Samuel L. Moschiano, the defendant herein, having duly taken an oath before the United States Grand Jury for the said District, which had been duly impaneled and sworn in the United States District Court for the said District, and which was then and there inquiring into matters involving violations of the laws of the United States, that he would testify truthfully, did

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unlawfully, knowingly and contrary to said oath make certain false material declarations as hereinafter described."

"At the time and place aforesaid, the Grand Jury was conducting an investigation to determine whether there had occurred in the Western District of New York and elsewhere violations of the United States Code, to wit, Title 18, United States Code, Sections 1341 and 1962 and any other criminal statutes of the United States."

"It was material to the aforesaid inquiry to determine whether or not Samuel L. Moschiano had on or about June 19, 1975, made certain statements to Special Agent Kenneth Olson, Federal Bureau of Investigation, relative to the payment of monetary amounts by Patrick Marrocco to Vincent Rallo for the purpose of causing and procuring arson."

"At the time and place alleged in Paragraph 1 herein, Samuel L. Moschiano appeared as a witness before the said Grand Jury, and having been placed under oath, did then and there testify falsely before the Grand Jury with respect to the said material matters as

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follows:

- "Q. Let me refresh your recollection because in June, when you were interviewed by Special Agent Olson, you stated at the settlement, Rallo received \$27,000. from Marrocco and \$12,000. from yourself for a total of \$39,000.?
- A. I did not say that.
- Q. Are you saying you did not say that or that is a lie?
- A. I am not saying it's a lie. I did not say it. Mr. Olson told me that Rallo got \$27,000. from Mr. Marrocco but I never made the remark that he got \$27,000. from Mr. Marrocco because I don't know what he got from him. All I know is what he got from me.
- Q. You never made any statement to Special Agent Olson that Rallo received approximately twenty-seven thousand from Marrocco and twelve thousand from you?
- A. No, sir, I did not make that statement. I made the statement about the twelve thousand from me, yes.
- Q. Your statement that you also made to Special Agent Olson which is in the report of the interview of June, that Rallo received approximately \$27,000. from Marrocco, did you make that statement?
- A. I did not make that statement. Mr. Olson made that

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statement to me.

Q Did you doubt that statement when he made it?

A I didn't say nothing about it. That I doubt it, because I didn't know what Mr. Marrocco gave Mr. Rallo.

Q You never made any such statement, you never made any such indication that Marrocco had given that money to Rallo?

A No, sir, never.

Q If that statement was made to you by anybody else, did you nod your head or agree or state yes that is right?

A No, sir, never."

"The aforesaid testimony of Samuel L. Moschiano as he then and there well knew and believed was not true in that he had personally made and confirmed the aforesaid statements to Special Agent Kenneth Olson, Federal Bureau of Investigation, relative to the payment of certain monetary amounts by Patrick Marrocco to Vincent Rallo."

"All in violation of Title 18, United States Code, Section 1623."

In Count 2 some of the provisions are parallel to those in Count 1, but I will read

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them:

"That on or about October 9, 1975, in the Western District of New York, Samuel L. Moschiano, the defendant herein, having duly taken an oath before the United States Grand Jury for the said District, which had been duly impaneled and sworn in the United States District Court for the said District and which was then and there inquiring into matters involving violations of the laws of the United States, that he would testify truthfully, did unlawfully, knowingly and contrary to said oath make certain false material declarations as hereinafter described."

"At the time and place aforesaid, the Grand Jury was conducting an investigation to determine whether there had occurred in the Western District of New York and elsewhere violations of the United States Code, to wit, Title 18, United States Code, Sections 1341 and 1962 and any other criminal statutes of the United States."

"It was material to the aforesaid inquiry to determine the cause and origin of the fire which occurred on or about January 26,

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1970, at the Nickelodian Tavern, 884 Emerson Street, Rochester, New York, and the involvement of Patrick Marrocco in causing that fire."

"At the time and place alleged in Paragraph 1 herein, Samuel L. Moschiano appeared as a witness before the said Grand Jury, and having been placed under oath, did then and there testify falsely before the Grand Jury with respect to the said material matters as follows:

"Q Now, let me direct your attention to January, 1970, early in the month. Did you have an occasion to at that time to meet with Mr. Marrocco at the Club?

A. I believe 1970 -- yes, I must have.

Q This is at the Nickelodian?

A. Yes.

Q Did you meet him several times throughout the month in early January?

A. Yes.

Q On one of these occasions that you met with him and conversed with him; did Mr. Marrocco ever make any statement concerning an arson to be performed at the Club?

A. No, sir.

Q Let me make sure you understand the question. Mr.

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Moschiano, I am asking that as you have indicated you have met several times with Mr. Marrocco?

A. Yes.

Q. Early part of January, 1970, you met him in the Club itself. All right, now, what I have asked, did you at any time with Mr. Marrocco discussed the possibility of an arson or a fire at the Club?

A. No, sir.

Q. Mr. Marrocco never mentioned anything connected with such a subject, he never mentioned an arson at the Club?

A. No, sir.

Q. Did he ever make a statement that the building was going to be burned by arson because he needed to get money?

A. No, sir.

Q. Do you understand my questions, Mr. Moschiano?

A. Yes.

Q. You understand exactly what I mean by arson?

A. Yes, sir.

Q. You understand I am talking about an arson at the Nickelodian Nightclub at 884 Emerson Street?

A. Yes, sir.

Q. Now, you also reported to the Special Agent Olson that Mr. Marrocco told you that the fire was going

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to cost twenty-five per cent of the fire on the insurance on the business and you told Marrocco that you felt that the price was too high, is that also what you told Special Agent Olson?

A. Yes.

Q. Was that also a lie?

A. Yes, sir.

Q. Did you state to Mr. Marrocco that you did not want the building burned?

A. No, because we never had that conversation with Mr. Marrocco."

"The aforesaid testimony of Samuel L. Moschiano as he then and there well knew and believed was not true in that he had been personally informed by Patrick Marrocco in approximately January, 1970, that the Nickelodian Tavern would intentionally be destroyed by fire for the purpose of collecting insurance proceeds and that the arson would cost twenty-five per cent of the insurance settlement."

"All in violation of Title 18, United States Code, Section 1623."

That is the indictment which, as I have told you initially, and I tell you again has the only purpose and sole purpose in our

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courts of telling Mr. Moschiano what he is charged with. Nothing in there is any evidence against Mr. Moschiano. I tell you about it again because it tells you what the charges are which you are going to deal with and as to which you are going to determine the guilt or innocence of Mr. Moschiano.

Both of those counts refer to Section 1623 of Title 18, which is the Criminal Code of the United States, and the pertinent part of Section 1623 is, "Whoever under oath in any proceeding before any grand jury of the United States knowingly makes any false, material declaration shall be guilty of an offense against the laws of the United States."

Now, there are three essential elements which are required to be proven in order to establish this offense that is charged in each count of the indictment. First, that the testimony was given under oath by the defendant before the United States Grand Jury proceeding, and as to some material matter in said grand jury proceeding; and second, that the testimony so given was knowingly given by the defendant in one or more of the respects charged

and third, that the false testimony was knowingly given by the defendant as charged.

You must keep in mind that the burden is always upon the prosecution, the United States of America here, represented by Mr. Parry, to prove beyond a reasonable doubt, and that is a phrase that I will define for you in due course, every essential element of the crime which is charged, and the law never imposes upon Mr. Moschiano or any other defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

The law and the indictment speak of materiality as one facet of one of the elements of criminality. The materiality of the matters involved in the alleged testimony, the alleged false testimony, is not a matter with which you are to be concerned, other than to take from me my decision as to that matter. It is a question for me to decide. I instruct you that the questions which were asked in Count 1 of the indictment before the grand jury, with respect to whether Mr. Moschiano made certain statements to Special Agent Olson

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relative to the payment of money by Patrick Marrocco to Vincent Rallo for the purpose of causing and procuring arson, and that the questions asked in Count 2 of the indictment of the defendant before the grand jury, with respect to whether Mr. Patrick Marrocco had informed the defendant prior to the destruction of the Nickelodian Tavern that would intentionally be destroyed by fire for the purpose of collecting insurance proceeds, and that the arson would cost twenty-five per cent of the insurance settlement, constituted material matter in the grand jury proceedings described in the indictment.

Now, an act or failure to act is knowingly done -- and you will remember that "knowingly" is referred to in my listing of the elements and in the statute and in the indictment -- an act or failure to act is knowingly done if it is done voluntarily and intentionally, and not because of mistake or accident or some other innocent reason, and the purpose of adding the word "knowingly" was to insure that no one would be convicted of a crime because of an act or failure to act which is

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due merely to a mistake or accident or such innocent reason, and the defendant, Mr. Moschiano, may not be found guilty of perjury simply because he gives or gave testimony which was factually incorrect. He may have given incorrect testimony because of surprise, confusion, haste, inadvertence, honest mistake as to fact, carelessness or negligence. As I said before, you may not find him guilty unless you find beyond a reasonable doubt that his giving of false testimony was knowingly done, and that the other elements of the crimes were present.

Now, coercion or compulsion may provide a legal excuse for the crimes which are charged in the indictment. In order, however, to provide a legal excuse for any such criminal conduct the compulsion must be present, immediate and of such a nature as to induce a well founded fear of impending death or serious bodily injury, and there must be no reasonable opportunity to escape the compulsion without committing the crime or participating in the commission of the crime. If the evidence in the case should leave you with reasonable

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doubt whether at the time and place of the alleged offense, and I will reiterate, as Mr. Hirsch has indicated, the only offense we are talking about is the alleged giving of false testimony in the grand jury, we are not concerned with whether or not there was any arson, whether in fact there was such, whether there was any hiring of anybody for it, whether there was any paying of anybody for it, whether Mr. Moschiano knew in advance about it, except as it bears upon the falseness of his testimony, all we are concerned about here is the alleged crime or crimes of giving false testimony on a material matter in the grand jury, and if the evidence in the case should leave you with a reasonable doubt whether at the time and place of the alleged offense, namely, in that grand jury room on October 9, 1975, the accused, Mr. Moschiano, acted or failed to act willingly and voluntarily, that is to say, whether he was forced, in effect, to commit or aid in the commission of the crime charged in the indictment by coercion or compulsion, as I have explained, and then you should acquit Mr. Moschiano, you should find

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him not guilty.

Now, you must also keep in mind that the falsity of the testimony in question must be proven beyond a reasonable doubt, and although the law does not require that this be done by a particular number of witnesses or by any other particular type of evidence, you must never base a finding of guilty on speculation or upon conjecture or upon surmise, unless you are convinced by the evidence in this case beyond a reasonable doubt as to each element of the offense charged, and unless you are so convinced, you must acquit the defendant.

There are certain rules of law, some of which I have already mentioned, which are common to all criminal cases, and which you must apply in reviewing the evidence that you have before you. A basic rule in all criminal cases is that the defendant is presumed to be innocent, and that presumption of innocence remains with him throughout the trial, and it continues to exist until such time as each of you is convinced beyond a reasonable doubt, by legal and competent evidence, that

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the defendant is guilty of the particular offense or offenses that he is charged with, and the burden of proof that a person is guilty beyond a reasonable doubt rests with the Government at all times, it never shifts to the defendant. In order to sustain its burden the Government must present proof which is sufficiently strong to convince each one of you of the defendant's guilt beyond a reasonable doubt. The requirement that the prosecution prove the defendant's guilt beyond a reasonable doubt extends to every essential element of the crime or crimes charged against the defendant. However, in determining whether the defendant's guilt as to each and every essential element has been established beyond a reasonable doubt, you are not limited to the proof from the Government witnesses. If you are satisfied from a review of all of the evidence in the case, both the Government's and the defendant's, that the evidence as to a particular count establishes guilt beyond a reasonable doubt, you may convict the defendant on that count. On the other hand, if you have a reasonable doubt at

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any point with respect to a particular count under consideration, you must acquit the defendant on that count, and you understand that when I say, "acquit," I mean return a verdict of not guilty.

You will separately weigh and determine the evidence as to each of the two counts, that is, you will determine his guilt or innocence as to Count 1 and as to Count 2 separately.

I promised to define the phrase "beyond a reasonable doubt." A reasonable doubt is a doubt which is based upon reason and common sense, and which arises from the state of the evidence. It is rarely possible to prove anything to an absolute certainty, and proof beyond a reasonable doubt is established if the evidence is such that you would be willing to rely and act upon in the most important of your own affairs. Mr. Moschiano is not to be convicted upon mere suspicion or conjecture. A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence, and because the burden is upon the prosecution to prove beyond a reason-

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able doubt that the defendant is guilty of every essential element, the defendant has a right to rely upon any failure of the prosecution to establish such proof. The defendant may also rely upon evidence brought out on cross-examination of the prosecution's witnesses. The law does not impose upon the defendant the duty of producing any evidence. Mr. Moschiano has chosen to take the witness stand in his own behalf and to introduce the testimony of Mr. Latone and Mr. Dimino, but that does not, however, change at all the burden of proof, it always rests with the Government. Now, remember that a reasonable doubt is such a doubt as is based upon reason and as appeals to your logic. It is a doubt arising out of something tangible in the evidence in the case or something lacking in the case. You are to distinguish it from doubt which might be based upon some emotion, such as upon a whim or upon a fancy. In essence, it is a doubt for which you have a reason. If you feel uncertain and are not fully convinced that the defendant is guilty of the crime charged in either count, and you believe

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you are acting in a reasonable manner, and you believe a reasonable man or woman in any matter of like importance would hesitate to convict because of such a doubt as you have, that is a reasonable doubt, to the benefit of which the defendant is entitled. If you have such a doubt you must acquit, you must find Mr. Moschiano not guilty on that particular count. A reasonable doubt in your mind as to any essential element of the crime entitles him to acquittal of the crime involved. However, the rule that the Government must prove every essential element of the crime beyond a reasonable doubt does not mean that you have to believe the testimony of every Government witness as being true beyond a reasonable doubt or that every piece of evidence that is offered is true beyond a reasonable doubt. It only means that the credible evidence weighed as a whole and viewed as a whole under these instructions must establish every essential element of the defendant's guilt beyond a reasonable doubt.

As the sole judges of the facts, you must determine which of the witnesses you believe,

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and what portion of their testimony you accept, and what weight you attach to it. At times during the trial I sustained objections to questions which were asked by an attorney, and at some other time I may have directed you to dismiss something from your minds, and I indicated that a certain answer or certain comment was stricken from the record. You may not draw any inference from an unanswered question, and you cannot consider testimony which I have stricken from the record in reaching your decision. The law requires that your decision be made solely upon the competent evidence before you, and items which I have excluded from your consideration are not legally admissible and are not to be considered. There has been mentioned of a polygraph, which is a scientific or quasi scientific machine. The results from such machine cannot be recieved in evidence in any criminal case in New York State, and that means this court in New York State. The words polygraph and polygraph exam, examination have been used from time to time in various situations throughout this trial. I charge you that you may not

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draw any implication or conclusion from the use of such words or what you may think you heard of the results of any such test, such as may have been conducted, if at all, on June 19, 1975. You are also the sole judges of the credibility, that is, the believability of witnesses and, as I said before, of the weight their testimony deserves. You should carefully scrutinize the testimony given and the circumstances under which each witness has testified, and every matter in evidence which tends to indicate whether a witness is worthy of belief. A witness in the course of his testimony may have acknowledged a criminal record, admitted other unlawful or reprehensible conduct or activities or admitted lying in the past. You must cautiously and carefully weigh all facts and circumstances to determine the effect, if any, that those facts and circumstances may have upon his believability. A past criminal record or such conduct or activities or past lying does not make the witness incompetent or disallow your believing the witness. You may believe him but you must be careful and you must

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weigh his testimony very cautiously. Similarly, you may consider any bias or prejudice which is demonstrated by a witness or any demonstrated hope of leniency or reward to be gained through testifying. This is not to say because a given witness may be a rather unsavory character in some respects that you may not credit or believe his testimony on the stand, but you are to judge each witness' intelligence and motive and state of mind, and demeanor and manner while he was on the stand. Judge also any relationship each witness may bear to either side of the case, and the manner in which each witness may be affected by the verdict, and the extent to which, if at all, each witness is either supported or contradicted by other evidence. Now, of course, the mere fact that the testimony of a witness is inconsistent or there are discrepancies in such testimony does not mean that you have to reject the witness' credibility. You must determine whether the inconsistency or the discrepancy is a result of falsification or whether, on the other hand, it is the result of innocent miscalculation or inaccurate memory

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or observation. If you do find that any witness has lied with respect to any material portion of his testimony, you may disregard only that portion which you find to be unbelievable or you may, if you desire, disregard the entire testimony of that witness. Now, a witness lies or testifies falsely if and when he does so knowingly and intentionally, and not when his testimony is merely wrong or erroneous due to mistake or inadequate observation or recollection or some other innocent reason. The difference is between merely being wrong or in error on the one hand, and on the other hand, lying. In evaluating credibility, you will, of course, determine whether or not the testimony of a given witness is inherently improbable or contradictory with respect to any material fact, as viewed in the light of the other evidence in the case. Now, I told you that you are to be the judges of the weight that you are going to give to the testimony of different witnesses. You will find perhaps in some of the evidence in the case is more believable than other evidence. This matter of the credibility of witnesses,

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as I have said, is one of the questions of fact that you will take into consideration, and in that respect, while you are utilizing your observations of the witnesses as they sat here in the witness stand before you, also use your own experience in your respective lives in deciding whether or when someone is telling the truth.

Now, there are two basic types of evidence, which we have in most cases and have here, which you can properly consider. Some proof consists of testimony by people who have witnessed a person's or a defendant's conduct and statements, and come here to the witness stand and testify directly about that conduct or those statements. This is what we call direct evidence or eyewitness evidence. There is also a type of evidence called circumstantial evidence. Proof of a chain of circumstances pointing to the commission of an offense or to some factual situation is termed circumstantial evidence. You can consider and you might find that both types of evidence, direct and circumstantial, bear

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on the question of the guilt or innocence of Mr. Moschiano and, as a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that before convicting a defendant that you be satisfied of his guilt beyond a reasonable doubt.

You are permitted to draw or infer from one fact the existence of another fact, if reason and experience support the inference, that is to say, you can draw from facts which you find to have been proven such reasonable inferences as seem justified by reason and logic in light of your own experiences in your life. Basically, an inference is nothing more than a deduction or a conclusion which reason and common sense lead you to draw from facts which have been proven. Any inference which you draw must reasonably flow from and must be based upon facts established by the evidence. Because a permissible inference in law must flow naturally and logically from and be based upon facts established by the evidence, it follows that you may not base further inferences merely on inferences al-

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ready drawn. One inference cannot be based or drawn from another inference. If in the course of your consideration of all of the evidence as to the defendant, and his guilt or innocence, you find that certain evidence admits equally of two inferences, one supporting his innocence, and the other supporting his guilt, you must accept the inference supporting his innocence and you must reject the inference supporting his guilt.

Now, I have told you at the outset, and again here, that a defendant in our courts is under no obligation to give or produce any evidence whatsoever. Mr. Moschiano has taken the witness stand, and he has brought in witnesses, but he still has the right to go to you, the jury, on the contention that the evidence of the prosecution is insufficient to warrant his conviction under the rules of law which I have outlined to you.

As a matter of law, I instruct you that you are not to be influenced at all by the circumstance that the Government of the United States is a party to this action. The Government is to be considered the same as

any other party, and the United States Special Attorney, Mr. Parry, is to be considered as any other lawyer would and should be considered. The Government happens to be the prosecutor, and that is its role in this case.

Also it is your duty merely to determine the guilt or innocence of the defendant. You should not concern yourself in any way with the punishment he may receive if convicted. Punishment is a matter with which only I shall be concerned, and only if you convict the defendant on one or both of the crimes with which he has been charged. Your verdict as to his guilt or innocence on each count must be reached unanimously, with all twelve of you agreeing on each verdict. I have told you that I am sending a copy of the indictment to the jury room with you, it has been marked Court Exhibit A. The indictment is not in evidence, as I told you before, it is merely a device we use to tell Mr. Moschiano of the charges which are lodged against him. You are not to consider it as proving or tending to prove anything whatsoever.

Now, Tuesday morning, Tuesday morning

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last, you took an oath, you said that you would well and truly try the issues joined in this case and a true verdict give therein according to the evidence, so help you God. If you follow that oath and you try the issues presented to you here without combining your thinking with any emotion, you will arrive at a true and just verdict. It must be clear to you that once you get into an emotional state, and if you let bias or sympathy or prejudice interfere with your thinking, that you will not arrive at a true and just verdict. As you deliberate be careful to listen to the opinions of the other jurors, and ask for an opportunity to express your own views. None of the jurors hold center stage in the jury room, and none of you monopolize the deliberations. If after listening to the other jurors and after stating your own views you become convinced that your view is wrong, do not hesitate because of stubbornness or pride of opinion to change your view. On the other hand, do not surrender your honest conviction merely because you are out numbered. Your verdict must be unanimous, each verdict

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must represent the absolute conviction of every one of you. As a first order of business, you will select one of your number to be your spokesman when you come back into the courtroom or when you have to communicate with me. Any communication that you want to have with me from your deliberation room you will do by a note which you will hand to the deputy marshal who will be on duty outside of your jury room. Do not ask the deputy marshal any questions concerning your duties. By means of a note you can ask me questions, you can ask for a clarification of my instructions on the law or a reading of my instructions or all or part of the testimony of any witness. Use a note also to tell me when you have reached your verdict or, in some appropriate circumstances, that you find yourselves so deadlocked that you feel unanimity is impossible. Never tell me or anyone else how your voting stands at any time, except when you finally come into the courtroom to tell me that a verdict has been reached unanimously.

Mr. Hirsch, Mr. Parry, do you have any requests or exceptions and, if so, do you want

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to be heard on them out of the presence of the jury?

MR. PARRY: No requests or exceptions on behalf of the Government.

MR. HIRSCH: I have one, your Honor.

THE COURT: Do you want to be heard out of the presence of the jury?

MR. HIRSCH: Yes, your Honor.

THE COURT: I will ask the jury to step out again just for a moment, and I will bring you right back in.

MR. HIRSCH: Before that may I approach the bench with Mr. Parry?

(Thereupon, an off the record discussion ensued at the sidebar between the Court and counsel.)

THE COURT: Mr. Hirsch has no exceptions or requests. Swear the deputy marshals.

(Thereupon, two deputy marshals were duly sworn.)

THE COURT: All right. There are two Government's exhibits

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which have been received in evidence, and those two will come to you, Government's Exhibit 5 and Government's Exhibit 4(a), and Court Exhibit A, the indictment, will come to you, but it is not evidence. All right, ladies and gentlemen.

(Thereupon, the court was in recess at 3:55 P.M.)

(Proceedings resumed, pursuant to recess, commencing at 4:30 P.M.)

(Counsel present, defendant absent, jury absent.)

MR. PARRY: Your Honor, I made reference to Government's Exhibit 7 in the record, I didn't know whether you wanted to preserve it or not.

THE COURT: No. I thought your friend Francis might have been talking about it, but he did not.

MR. PARRY: No.

THE COURT: I have advised both attorneys of the note I received from the jury at approximately ten after four, which simply says, "Mr. Olson's

testimony." I don't think it says Agent Olson's testimony, just those three words. Mr. Hirsch has indicated that under the circumstances, which seem to be that Mr. Moschiano had gone back after the jury retired to his place of business, namely, the Dimino Construction Company, from whence it would take a while to get back, that he would waive the presence of Mr. Moschiano at this time for this purpose only, and if there be some question on Mr. Moschiano's part, as soon as we have contact with him, that Mr. Moschiano insists, we will do what we are going to do, namely, read the testimony of Mr. Olson again.

MR. HIRSCH: That is correct, your Honor. I would like to state for the record that when Mr. Moschiano left he said he was going to the office of the Dimino Construction Company on Ridgeway Avenue. I know that to be a fair distance, and it is 4:30, I think the traffic is quite heavy at this time, so I would so stipulate.

THE COURT: All right. Should we tell the jury nothing about this, just let them go forward and hear it?

MR. HIRSCH: I think so.

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THE COURT: Yes. Let the record show that Mr. Moschiano is not here. Bring the jury in.

(Thereupon, the jury entered the courtroom at 4:31 P.M.)

THE COURT: Who has been designated to speak for the jury?

JUROR NO. 6: I have, your Honor.

THE COURT: I had your note at about ten after four, I apologize for the fact that it has taken us this long to reconvene. Your note simply says, "Mr. Olson's testimony," by which I infer that you want to have read to you the testimony given by Kenneth R. Olson?

FOREMAN: That is correct, your Honor.

THE COURT: All right, we are ready to proceed.

(Thereupon, reporter read from Page 97, Line 2 through Page 127, Line 20.)

THE COURT: Mr. Buckholtz, that comprises all of the testimony of Agent Olson. Is that all you wanted at this point?

FOREMAN: That is all at this time. We appreciate it very much.

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THE COURT: All right, thank you.

(Thereupon, jury exited the courtroom at
5:05 P.M.)

MR. HIRSCH: During the reading of the testimony pertaining to Agent Olson, my client, Samuel Moschiano, came in, and I just had a conversation with him at counsel table, and I told him that I had waived his right to be here at the beginning of the reading back of Mr. Olson's testimony, and I asked him if that was all right with him, and he indicated to me it was.

THE COURT: Is that right, Mr. Moschiano?

DEFENDANT: Yes, it was, sir.

THE COURT: I noticed that you had come in at 4:51, and I marked the point in my notes of the Olson testimony, but you now waive your having been absent on the first part of it, is that correct?

DEFENDANT: Yes, sir.

THE COURT: All right, we have no idea, of course, when the jury is next going to come in, Mr. Moschiano, are you going to do the same thing?

DEFENDANT: No, your Honor. I think I will stay right

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here in the building.

THE COURT: All right, fine.

DEFENDANT: Just as far as the bottom floor.

THE COURT: As far as our program, if we hear nothing more from the jury by approximately 6:15 or so I will send a note to them and ask them whether they would like to continue deliberating or whether they would like to take a break for dinner, and if they say yes, we will send them out. Of course, we will do that without bringing them into the courtroom. We will let you know that happened so that you will know you will be free to go for a certain time and come back.

DEFENDANT: Yes, sir.

(Thereupon, the court was in recess at 5:10 P.M.)

(Proceedings resumed, pursuant to recess, commencing at 5:28 P.M.)

(Defendant present, counsel present, jury absent.)

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THE COURT:

All right. They have a question that can be answered fairly simply. It came to me at twelve after five, "Judge, are Court Exhibit A, Government's Exhibit 4(a) and Government's Exhibit 5 the only documents we may peruse in our deliberations? Signed, foreman." That can be very simply answered.

(Thereupon, the jury entered the courtroom at 5:30 P.M.)

THE COURT:

Various people connected with the trial, attorneys, and so forth are unused to the rapidity of notes from the jury, and scattered to the four winds. I have trouble getting them back, which accounts for the delay in bringing you in. I had a note from you, Mr. Buckholtz, at twelve after five, which I have read to the lawyers, which says, "Judge, are Court Exhibit A, Government's Exhibit 4(a) and Government's Exhibit 5 the only documents we may peruse in our deliberations?" There are only two exhibits, among those which have been mentioned, which are in evidence, and those are 4(a), which is the statement signed

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by Mr. Moschiano, with part of it blocked out, and Government's Exhibit 5, which is the order granting immunity to Mr. Moschiano, signed by Judge Burke, and those are the only two that are in evidence and may be considered by you as evidence. Now, Exhibit A is the indictment, which is there for your information and organizational purposes, and I must caution again is not evidence. Now, there was testimony about and concerning Government's Exhibit 1 and Government's Exhibit 2, by the witness Leonard Sciolino, Government's Exhibit 1 being the stenotype notes which he said he had taken at the October 9, 1975 grand jury meeting. You recall that he read from that into the record. What he read from that is in evidence. It is not harmful to state to you that what he read or what he stated was in those notes closely paralleled to what you find in Exhibit A, the indictment, as far as the questions and answers. There were about three or four deviations, but they were not material deviations. He also testified about Government's Exhibit 2, which he said was the transcript, a typed transcript of what

he had in his notes. That is not in evidence and cannot be referred to, but as to the two packages or parcels of the questions and answers, Mr. Moschiano was allowed to read that and he said, yes, he had been asked those questions and given those answers. You will recall that those two portions were read to you, I remember once by Mr. Parry, I think the other package was read by you, Mr. Hirsch, or maybe you read a portion of what Mr. Parry had referred to. There were two packages that came in that way. Again, what came in that way, which is a part of Government's Exhibit 2, is before you as evidence. If you have any trouble recollecting what that is, again we can dig that out and read it to you. Government's Exhibit 3, and I suppose this is more the gist and target of your inquiry is Agent Olson's report of his interview of Mr. Moschiano on the 19th. He used that only to refresh his recollection he read through it, put it down and then testified to you concerning the events of that day, so that document is not before you and cannot be before you, but you have his testimony as refreshed by

that document. So there is nothing else that we are concerned with, to my recollection.

FOREMAN:

Your Honor, the one we were concerned about was Government's Exhibit 3, but you answered our question by stating that it was based -- the testimony that he gave, his testimony on the witness stand, is based on that document after refreshing his memory.

THE COURT:

That is not in evidence because, after looking at it, Mr. Olson's recollection was refreshed, so he was able to put it down and testify thereafter independently. Consequently his testimony is in evidence, but the document is not.

FOREMAN:

We do request, your Honor, one other thing at this time. We have a question as to the word "coercion" and --

THE COURT:

Coercion?

FOREMAN:

Coercion and how it affects our deliberations, as to our final outcome, as the law states.

THE COURT:

Is there any need for any definition of the word "coercion"? Do the members of the jury understand the word "coercion" which should be given its usual day to day understanding.

FOREMAN:

I think as it relates to our possible delibera-

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tions in the case.

THE COURT:

Coercion is usually associated not with physical force or pressure, although I suppose in some concept it could have that interpretation, but usually it is some non-physical persuasion put upon some person, 'If you don't pay us X dollars, we will do such and so, if you don't eat your meat, you can't have ice cream,' a form of coercion, and in this circumstance comes to bear whether or not you feel there was any coercion brought to bear upon Mr. Moschiano by the Government or by the overall circumstances which, to your minds and satisfaction would have caused him to testify falsely on October 9, 1975. If you felt that that was the case, you could take that as a defense. However, I advised you in that connection, and I will read that one portion of my charge again to you. It says, "Coercion or compulsion -- and they would be parallel terms, compulsion being maybe a stronger term, you would actually force, compel somebody to do it, rather than to coerce or strongly urge them to do something -- may provide a legal excuse for the crimes charged in the indict-

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ment. In order, however, to provide a legal excuse for any criminal conduct, the compulsion and the coercion must be present, immediate and of such a nature as to induce a well founded fear of impending death or serious bodily injury. There must be no reasonable opportunity to escape the compulsion without committing the crime or participating in the commission of the crime." So that you can see that what I am talking about is something much stronger than, 'You must eat your meat before you get your ice cream.' "If the evidence in the case should leave you with a reasonable doubt whether at the time and place of the alleged offense the accused, Mr. Moschiano, acted or failed to act willingly and voluntarily, that is to say, whether he was forced, in effect, to commit the crime which is charged in the indictment by coercion or compulsion, as I have explained, then you must acquit Mr. Moschiano." Now, having reiterated that, Mr. Buckholtz, do you have a further question as to it and its applicability here?

FOREMAN:

No, your Honor, unless any of the other members of the jury have one.

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THE COURT: All right. We will try to stay on a shorter range than we have. When you have a further note, we will convene more rapidly.

FOREMAN: We will try and hold the notes down. Thank you, your Honor.

(Thereupon, the jury exited the courtroom at 5:43 P.M.)

THE COURT: All right, Mr. Hirsch.

MR. HIRSCH: May it please the Court, I would take exception to the instructions given by the Court, respectfully, to the questions asked by Mr. Buckholtz. I would request that the Court also instruct the jury that there is such a thing as psychological compulsion, coercion.

THE COURT: All right. I will not do that, Mr. Hirsch. You may have an exception.

MR. HIRSCH: Thank you, your Honor.

(Thereupon, the court was in recess at 5:45 P.M.)

(Proceedings resumed, pursuant to recess, commencing at 9:26 P.M.)

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(Defendant present, counsel present.)

THE COURT: It is now 9:26 P.M. I have a note indicating 8:50 P.M., about which I had a telephone call and received actually at 9:23. "Judge Elfvin, the jurors request to hear the testimony of Mr. Mahoney reread to help us recollect certain aspects of that testimony." Signed by the foreman. Mr. Noel has located that.

(Thereupon, the jury entered the courtroom at 9:27 P.M.)

THE COURT: Mr. Buckholtz, I have your note, which you wrote at 8:50 and I received about five minutes ago, after reconvening the various parties. It says, "Judge Elfvin, the jurors request to hear the testimony of Mr. Mahoney reread to help us recollect certain aspects of that testimony." We are prepared to read that.

FOREMAN: Thank you, sir.

(Thereupon, the reporter read from Page 235, Line 5 through Page 259, Line 3.)

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THE COURT: There are two references on the cross-examination there at the end to Government's Exhibit 3, which in context seems to me to be relating to Government's Exhibit 4, "Did you see Mr. Moschiano sign his name to Government's Exhibit 3," it said, twice you repeated that. It seems to me to be a misstatement, it should be Government's Exhibit 4, which was the full statement, two sheets, signed by Mr. Moschiano. Those two references to Government's Exhibit 3, it seems to me, were inadvertently spoken or inadvertently recorded as 3. Can we agree to that?

MR. HIRSCH: Yes, your Honor. That is now 4(a)?

THE COURT: Right. Now, Mr. Buckholtz, is there any other thing as to which we can be helpful to the jury?

FOREMAN: At this time I don't think there is, your Honor. We would like to adjourn. Thank you for the Court's indulgence.

THE COURT: Now, I know that the jurors have in mind that they should be exchanging views and considering each other's views, and I will let you proceed on that basis.

FOREMAN: Thank you, your Honor.

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(Thereupon, the jury exited the courtroom
at 9:55 P.M.)

THE COURT: Gentlemen, no comment? All right.

(Thereupon, the court was in recess at
9:55 P.M.)

(Proceedings resumed, pursuant to recess,
commencing at 10:47 P.M.)

(Defendant present, counsel present, jury
present.)

THE COURT: All right, ladies and gentlemen, it is now
10:47 P.M. on the 30th day of December. You
have been deliberating for quite sometime
today, and it is my consideration that the
deliberations have gone on sufficiently long,
and I am going to recess your deliberations
at this time. Unfortunately, tomorrow is a
federal holiday, the next day is Saturday,
the next day is Sunday, and Monday, the 3rd,
I find myself occupied completely in Buffalo.
So I'm going to direct each one of you to be

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back here at 10:00 A.M. on Tuesday, January 4, and resume your deliberations. I will be here in Rochester by at least one o'clock on that day, at which time I will hand a note into you to find out how you are doing. Mr. Hirsch, Mr. Parry, be here by one o'clock on Tuesday, January 4. You are excused at this time. Do not talk among yourselves any further about the case, and do not talk with anyone else. Try to think the thing through in that period of time, think through your own reasoning, think through the views expressed to you by the others, and come back at ten o'clock on Tuesday, January 4, prepared to continue your deliberations. You are excused at this time.

(Thereupon, the jury exited the courtroom at 10:48 P.M.)

MR. HIRSCH: May it please the Court, I would request that the Court also admonish the jury not to read anything about this case in the newspapers. I noticed that there was a reporter here for a good part of the day, and I would think there

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probably will be something in the local press tomorrow, if not, something on television.

THE COURT: All right, would you call them back?

MR. PARRY: Your Honor, would it be permissible to inquire of the jury if there is a chance of reaching a verdict?

THE COURT: No, I am not going to coerce them into that. I am going to recess them. If I start inquiring, it is hard to avoid some degree of coercion on it. I considered the matter, and I decided that I would not even bring them in and pose the alternative of further deliberations or this delay.

(Thereupon, the jury entered the courtroom at 10:50 P.M.)

THE COURT: You don't have to take your seats, just come into the courtroom. Now, I forgot to say -- I know there has been a number of the press here in the courtroom and there may or may not be some items in the local newspaper about the case, and there may or may not be something on radio or on television. Do your best to concentrate on not reading anything about the

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case in the newspapers, and try to avoid hearing anything about it or seeing anything on television. I want you to remain free of outside influences to all extent possible until you come back on Tuesday. Happy New Year to you all.

(Thereupon, the jury exited the courtroom at 10:51 P.M.)

MR. HIRSCH: Your Honor, on behalf of the defendant, I would like to respectfully except to the procedure of the Court at this time, particularly since it is approximately five minutes to eleven, allowing the jury to be recess until January 4, without inquiring as to whether or not they are close to a verdict at this time, and also allowing --

THE COURT: Of course, I did remark just a few moments ago about my consideration in that regard, and I considered that it would be difficult, almost impossible to avoid an element of coercion upon the jury in making any such inquiry and, of course, I want to stay away from that completely. I am appreciative of the longer than

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usual recess necessitated by the holiday and by the weekend, and by my own occupation in Buffalo on Monday, the 3rd, but I deem it unavoidable.

MR. HIRSCH: I would respectfully request that the jury not be disbanded, be allowed to remain in a hotel overnight, to be brought back here in the morning to continue their deliberations at a suitable time in the morning, keeping them together until such time as they either reached a verdict or the Court determines that it is impossible for them to reach a verdict.

THE COURT: No, I will not do that.

MR. HIRSCH: Exception, your Honor.

MR. PARRY: I would join in that request, your Honor.

THE COURT: Which request?

MR. PARRY: That the jury be held overnight and resume their deliberations in the morning.

THE COURT: No, I will not do that.

MR. HIRSCH: Did you say one o'clock on Tuesday?

THE COURT: Be here at one. I will be here by one o'clock, the jury will be here by ten, and at that time I contemplate sending a note to them to find out whether they wish to continue deliberations. If they have reached some determination, I

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assume I will have a note by that time, and if they have not, I will inquire whether they wish to continue their deliberations or go out to lunch, and we will work from that point on.

MR. PARRY:

Your Honor, in regard to Tuesday, I have been ordered to appear before Chief Judge Curtain for jury selection on that day, and if I may send a substitute in case I am before Chief Judge Curtain, I will appreciate your indulgence.

THE COURT:

You can consult, of course, about that situation on Monday. I don't think Judge Curtain plans to be working tomorrow. However, he is a hardworking judge, he might be in and available tomorrow. You may find your situation changed with him or some amelioration of the situation but, in any event, if you cannot be here, someone can be here on your behalf.

MR. PARRY:

Thank you, Judge.

MR. HIRSCH:

Happy New Year, Judge.

(Thereupon, the court was in recess at
11:00 P.M.)

* * * * *

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The Daily Record

April 8, 1977

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County of Monroe) ss.:
City of Rochester)

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Robert J. Hirsch, Esq.

Attorney(s) for

Appellant

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(s)he personally served three (3) copies of the printed ☐ Record ☒ Brief ☒ Appendix
of the above entitled case addressed to:

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Buffalo, New York 14202

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